GREEN TREE SERVICING, LLC	NO. 17-CA-214
VERSUS	FIFTH CIRCUIT
CAROLYN EDWARDS, BRENDA EDWARDS MAYS, AUGUST EDWARDS, KENNETH EDWARDS, SHARON EDWARDS WRIGHT, RALPH EDWARDS, WAYNE EDWARDS, ELTON EDWARDS, TERRY EDWARDS JACKSON, EMILE EDWARDS, TIMOTHY EDWARDS, AND THE UNITED STATES OF AMERICA	COURT OF APPEAL STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 742-763, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

November 15, 2017

ROBERT M. MURPHY
JUDGE

Panel composed of Judges Jude G. Gravois,
Robert M. Murphy, and Stephen J. Windhorst

APPEAL DISMISSED IN PART; AFFIRMED IN PART

RMM
JGG
SJW

COUNSEL FOR PLAINTIFF/APPELLEE,
DITECH FINANCIAL, LLC FKA GREEN TREE SERVICING, LLC

Rader Jackson
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COUNSEL FOR DEFENDANT/APPELLANT,
CAROLYN EDWARDS

Anthony Sartorio

MURPHY, J.

Defendant, Carolyn Edwards ("Carolyn"), has brought this appeal seeking reversal of a default judgment rendered against her and in favor of plaintiff, Ditech Financial LLC formerly known as Green Tree Servicing LLC (hereinafter "Green Tree"), in Green Tree's "Suit on Promissory Note and to Enforce Mortgage and for Declaratory Judgment." Carolyn also seeks reversal of an In Rem Judgment and Declaratory Judgment entered against the property located at 1311 Cook Street, Gretna, Louisiana on summary judgment. For the following reasons, we dismiss the appeal, in part, and affirm, in part.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

By cash sale deed, dated June 6, 1957, and recorded in the conveyance records of Jefferson Parish at Instrument Number 101872, Conveyance Book 426, Page 128, Rosabell Sullivan Edwards and her husband, August Edwards, acquired the following described immovable property located at 1311 Cook Street, Gretna, Louisiana (hereinafter "the Property"):

> TWO A CERTAIN PIECE OF PORTION OF GROUND, TOGETHER WITH ALL THE BUIDLINGS AND IMPROVEMENTS THEREON, AND ALL OF THE RIGHTS, WAYS, PRIVILEGES, SERVITUDES, APPURTENANCES AND ADVANTAGES THEREUNTO BELONGING OR IN ANYWISE APPERTAINING, SITUATED IN THE PARISH OF JEFFERSON, STATE OF LOUISIANA, IN THAT PART THEREOF KNOWN AS SURBURBAN PARK SUBDIVISION, SAID LOTS ARE DESIGNATED BY THE NO, FIFTEEN AND LETTER "B" OF SQUARE THIRTY-FOUR (34), WHICH SQUARE IS BOUNDED BY COOK, THEARD, BAINBRIDGE AND LEBOEUF STREETS. SAID LOTS 15 AND B ADJOIN EACH OTHER. LOT NO. 15 MEASURES TWENTY-FIVE (25') FEET FRONT ON COOK STREET, THE SAME IN WIDTH IN THE REAR, BY A DEPTH OF ONE HUNDRED TWENTY-FIVE (125') FEET. LOT "B" MEASURES SIXTEEN AND 60/100 (16.60') FRONT ON COOK STREET, BY A DEPTH OF ONE HUNDRED TWENTY-FIVE (125') ALONG THE LINE OF LOT NO. 15 AND A DEPTH OF ONE HUNDRED

TWENTY-FIVE AND 03/100 (125.03') FEET; ALL IN ACCORDANCE WITH A PLAN MADE BY J.T.W. STEPHENS, SURVEYOR, ON JUNE 21, 1917, ON FILE IN THE OFFICE OF BLYTHE & COMPANY, INC., AGENT FOR O'CONNER REALTY CO., INC., NEW ORLEANS, BUILDING, NEW ORLEANS, LOUISIANA IMPROVEMENTS BEAR THE MUNICIPAL NO. 1311 COOK STREET, GRETNA, LA 70056.

Following the death of August Edwards, his succession was opened and a judgment of possession was rendered on May 2, 2002, placing Rosabell Sullivan Edwards, as surviving spouse in the community of the decedent, in possession of an undivided one-half (1/2) interest in and to all the property belonging to the community which existed between them, and granting her a usufruct over the other undivided one-half (1/2) interest belonging to the estate of the decedent, August Edwards. Brenda Mays Edwards, August Edwards, Kenneth Edwards, Sharon Edwards Wright, Ralph Edwards, Wayne Edwards, Elton Edwards, Terry Edwards Jackson, Emile Edwards, Carolyn Edwards and Timothy Edwards, as sole heirs of the decedent (hereinafter "the Heirs"), were placed into possession of the naked ownership of the other undivided one-half (1/2) interest, representing the decedent's share of the community, in undivided equal portions subject to the lifetime usufruct of their mother, Rosabell Sullivan Edwards ("Rosabell").

On January 28, 2004, Rosabell executed a promissory note for the principal sum of $40,000.00 together with 6.375% annual interest, payable in monthly installments of $249.55, beginning on March 1, 2004. The promissory note was made payable to the order of Countrywide Home Loans, Inc. and endorsed in blank.[1] The promissory note was secured by an act of mortgage on the above described Property executed by Rosabell on the same date and in the same amount,

[1] In the original act of mortgage, the mortgage was assigned to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Countrywide Home Loans, Inc. and its successors and assigns. On March 14, 2013, MERS assigned the mortgage to Green Tree Servicing LLC, now known as Ditech Financial LLC. A certified copy of the assignment was attached to Green Tree's petition.

which was recorded in the mortgage records of Jefferson Parish as Instrument No. 1439009, MOB 4193, Page 430. Rosabell was the sole obligor on both the promissory note and mortgage with which the note was secured; the Heirs did not intervene or execute the note or mortgage.

Rosabell died intestate on May 7, 2008. At the time of her death, Rosabell was domiciled and resided at the Property. On December 16, 2010, in accordance with La. C.C.P. art. 3432, Carolyn and Elton Edwards executed an affidavit of small succession providing that the Heirs each inherited an undivided 1/11 interest in the Property. The affidavit of small succession was recorded on December 16, 2010 in the official records of Jefferson Parish as Instrument No. 11053017, Conveyance Book 3273, Page 382. The affidavit of small succession signed by Carolyn contains the following language, in pertinent part:

> (9) Affiant understands and affirms under penalty of perjury that if Affiant is an heir, Affiant accepts the succession of the Decedents [sic], including the Decedents' [sic] debts. Affiant further acknowledges and affirms under penalty of perjury that Affiant executes this document after having read the document line-by-line, that Affiant understands the legal significance of this document, that the information contained in this Affidavit is true, correct and complete to the best of Affiant's knowledge, information, and belief, and that Affiant executes this document knowingly, freely and voluntarily and without any coercion or reservation whatsoever.

On August 26, 2014, each of the Heirs, other than Carolyn, executed identical quitclaim deeds conveying ownership of their respective 1/11 undivided interests in the Property to Carolyn.[2] Each of the quitclaim deeds, following a description of the Property, contains the following language, in pertinent part:

> Vendee [Carolyn] understands that this property may be subject to outstanding mortgages and vendee does understand that these mortgages may outrank [her] privilege and attach to the above-described property.

[2] Though the quitclaim deeds were executed on August 26, 2014, they were not recorded in the conveyance records of Jefferson Parish until October 30, 2014.

As of August 24, 2014, Carolyn became the sole owner of the entirety of the Property.

On September 24, 2014, prior to the recordation of the ten quitclaim deeds, Green Tree filed a "Suit on Promissory Note and to Enforce Mortgage and For Declaratory Judgment" in an ordinary proceeding naming each of the Heirs as a defendant.[3] In its petition, Green Tree alleged that it was the holder of the promissory note secured by the mortgage on the Property executed by Rosabell on January 28, 2004, and that the note was delinquent and in default as the installment due for November 1, 2008, and all subsequent installments, remained unpaid. In support of its petition, Green Tree submitted the original promissory note and a certified copy of the act of mortgage.[4] As the holder of the promissory note, and pursuant to acceleration clauses contained in the note and mortgage, Green Tree declared the entire indebtedness immediately due and filed suit to enforce the note and the mortgage seeking payment of the "unpaid balance of $37,063.19 principal together with 6.375% per annum interest from October 1, 2008 until paid," and all allowable charges, costs, expenses, and reasonable attorney's fees permitted by the note and mortgage. Green Tree also prayed for judgment declaring and recognizing that the Heirs either concurred or consented to the mortgage prior to its execution, that the mortgage encumbered the entirety of the Property, and that the heirs inherited the Property subject to the mortgage. Green Tree also requested

[3] Green Tree also named the United States of America as a defendant in order to "determine rank and priority" on the basis of an IRS lien attached to the Property at issue against Elton and Jennifer Edwards. The record reflects that the United States was dismissed from the lawsuit.

[4] In further support of its petition, Green Tree submitted: (1) a copy of the cash sale deed evidencing the purchase of the Property by August and Rosabell Edwards on June 6, 1957; (2) a copy of the judgment of possession rendered on May 2, 2002 in August Edwards' succession evidencing Rosabell's ownership of an undivided one-half (1/2) interest in the Property and her usufruct over the other undivided one-half (1/2) interest, the naked ownership having been placed in the possession of the eleven major children in equal shares; and, (3) a copy of the affidavit of small succession signed by Carolyn and Elton Edwards on December 16, 2010 evidencing that each Heir inherited from Rosabell an equal share in her undivided one-half (1/2) interest in the Property and evidencing an acceptance (at least by Carolyn and Elton) of Rosabell's succession, including Rosabell's debts.

that a curator ad hoc be appointed to represent the absentee Heirs that were not domiciled in Louisiana.

Carolyn was personally served with citation and a certified copy of the petition filed by Green Tree on December 11, 2014.[5] Once served with a copy of the citation and petition, Carolyn did not file an answer, exception, any other responsive pleading, or otherwise make an appearance in the case. Consequently, Green Tree filed a motion for preliminary default against Carolyn and the other Heirs who had been properly served and not responded, which was granted on April 7, 2015. On December 18, 2015, Green Tree filed a motion for summary judgment against the remaining absentee defendants, in rem only.

Also on December 18, 2015, Green moved to confirm the preliminary default previously granted on April 7, 2015 against Carolyn (and Wayne, Terry, Ralph and Emile Edwards). The record reflects that, at that time, counsel for Green Tree put into evidence an affidavit of account and status as note holder executed by Krista Leonard on behalf of Ditech Financial LLC showing the default and evidencing the amount owed. Additionally, counsel for Green Tree presented a certification, which certified service of citation and the petition, that a preliminary default had been entered, and that no answer or other responsive pleading had been filed by any of the five defendants.

On January 4, 2016, considering Green Tree's motion to confirm the preliminary default, the affidavit of account and status as a note holder, counsel's certification, and the exhibits attached to the petition, a default judgment was

[5] Personal service was also made on Terry Edwards on October 13, 2014. Domiciliary service was made on Wayne Edwards on October 14, 2014, on Ralph Edwards on October 11, 2014, and on Emile Edwards on November 3, 2014. Neither Terry, Wayne, Ralph, nor Emile filed an answer or any other pleading in response to Green Tree's petition. A Curator Ad Hoc was appointed for the nonresident Heirs, Brenda Mays Edwards, Kenneth Edwards, Sharon Wright Edwards, and Timothy Edwards, and an answer was filed on their behalf on December 10, 2014. Additionally, due to the inability to perfect service upon August Edwards and Elton Edwards, a Curator Ad Hoc was appointed to represent their interests. The Curator for these defendants was served and an answer was filed on their behalf on March 24, 2015.

signed and rendered in favor of Green Tree and against the defendants, Carolyn, Wayne, Terry, Ralph and Emile Edwards, casting them in judgment "jointly and *in solido*" to pay Green Tree the sum of "$37,063.19 principal[,] together with 6.375% per annum interest from October 1, 2008 until paid," and all allowable charges, fees and costs allowable under the note and mortgage. Additionally, the default judgment declared that Carolyn, Wayne, Terry, Ralph and Emile Edwards had "ratified, authorized and confirmed" the mortgage on the Property, and that the mortgage encumbered the entirety of the property, including any and all interest each of them had in the Property.

Notice of the default judgment was sent to Carolyn on January 5, 2016. Thereafter, Carolyn did not file (nor did any of the other defendants cast in judgment) a motion for new trial or seek to annul the default judgment.[6]

Eight months later, in September 2016, Green Tree's motion for summary judgment against the remaining defendant Heirs, represented by a curator, came for hearing. Certified copies of the ten quitclaim deeds, executed individually by the Heirs transferring each of their respective interests in the Property to Carolyn, were introduced into evidence. Though not made a party to the motion for summary judgment – as Green Tree's rights against her had already been adjudicated in the prior default judgment – nor having filed a responsive pleading thereto, Carolyn, in proper person, appeared at the hearing on the motion for summary judgment. She stated the following in open court on the record:

> Yes. They're trying to foreclose on the property that I've been trying to talk to Country Wide when Country Wide had it. I have all kinds of information that – and then by the time I got to be the executive [sic] of the estate, Bank America took over, and since then Bank America has sent me checks for foreclosure, defaults and all. I have checks and all that they sent me. . . By the time I started talking to Bank America, BAC started on it, and I was

[6] The record reflects that on January 6, 2016, the day following the entry of default, Carolyn filed, in proper person, a motion for extension of time to file an answer, which was denied by the trial court as moot given the previously entered default judgment against her.

> just collecting information and steady trying to pay the mortgage. . . Bank America, they told me that I wasn't eligible for a loan modification because I wasn't residing in the house, and, thereafter, I sent them utility bills that they requested for me to say that I was residing in the house. . .

At the close of the hearing, summary judgment was granted in favor of Green Tree and an in rem judgment was entered dated September 8, 2016 recognizing that the ten recorded quitclaim deeds were "subject to and burdened by" the mortgage on the Property, and recognizing that, by virtue of the quitclaim deeds, Carolyn was the sole owner of the Property "subject to the mortgage." The in rem judgment further ordered that Carolyn remain the sole defendant in the matter and that the remaining defendant Heirs be dismissed from the proceedings.

It is from these two judgments – the January 4, 2016 default judgment and the September 8, 2016 in rem judgment – that Carolyn brings the instant appeal.

ISSUES PRESENTED FOR REVIEW

In her first and second assignments of error, Carolyn attacks the lower court's default judgment against her and the in rem judgment against the Property alleging that both judgments were erroneously granted because they were "based on a relatively null and invalid mortgage, entered by only one co-owner [Rosabell], without evidence the non-signing co-owners [the Heirs] accepted the obligation," or otherwise ratified, authorized or confirmed it, and that it was error for the trial court to declare that the entirety of the Property was subject to the relatively null and invalid mortgage. In her third assignment of error, Carolyn argues that it was error for the trial court to render judgments for the full sum of the alleged past due amount when, on the face of Green Tree's petition, a portion of the alleged delinquency had prescribed. In her fourth and fifth assignments of error, Carolyn avers the trial court erred in appointing a curator to represent the interests of the

four nonresident defendants when long arm service had not been attempted, and in granting a judgment subordinating an IRS lien without proper service.

For the reasons that follow, because we find the January 4, 2016 default judgment was a final judgment from which an appeal of the decretal elements determined therein no longer lies, we dismiss that portion of Carolyn's appeal that seeks reversal of the default judgment rendered against her. Further, based on the validity of the mortgage (any alleged relative nullity therein having been cured) and recognition that the mortgage encumbers the entirety of the Property, both factors having been previously determined pursuant to the decretal language contained in the default judgment that is no longer appealable and now definitive, we affirm the in rem judgment recognizing Carolyn as the sole owner of the Property subject to the mortgage and dismissing the remaining defendant Heirs.

STANDARD OF REVIEW

The issues presented in the case *sub judice* involve questions of law. An appellate court reviews questions of law utilizing the *de novo* standard of review without deference to the legal conclusions of the court below. *Durio v. Horace Mann Ins. Co.*, 11-0084, p. 14 (La. 10/25/11), 74 So.3d 1159, 1168. "The proper standard of appellate review of questions of law is simply whether the court's interpretive decision is legally correct." *Franklin Southland Printing Co. v. New Orleans Aviation Bd.*, 99-60, p. 8 (La. App. 5 Cir. 7/27/99), 739 So.2d 977, 981. When the law is erroneously applied by the trial court, the *de novo* standard of review is also used. *Kevin Associates, L.L.C. v. Crawford*, 03-0211, p. 15 (La. 1/30/04), 865 So.2d 34, 43.

LAW AND DISCUSSION

1. *The January 4, 2016 Default Judgment*

The first assignment of error raised by Carolyn pertains to the trial court's granting of the default judgment in favor of Green Tree, which judgment

recognized that all of the Heirs, including Carolyn, had "ratified, authorized and confirmed" the mortgage, and recognized that the mortgage encumbers the entirety of the Property, "including any and all interest" Carolyn has in the Property. By her third assignment of error, Carolyn avers the default judgment contains an inflated amount awarded to Green Tree because, on the face of its petition, a portion of the alleged delinquency had prescribed. Before we can address the merits of this assignments of error, we must first determine whether the default judgment rendered against Carolyn on January 4, 2016 was a final judgment, such that the delays for filing an appeal of that judgment would have expired on or about March 14, 2016, making the instant appeal filed eight months later on November 14, 2016, untimely.[7]

In support of her argument that the current appeal is timely, Carolyn contends that the default judgment was a partial judgment as it did not dispose of all of the claims of plaintiff and was not certified as a final and appealable judgment in accordance with La. C.C.P. art 1915. According to Carolyn, the default judgment did not become a final, appealable judgment until September 8, 2016, when the court entered summary judgment dismissing the remaining Heirs and granting all of the relief as requested by Green Tree in its petition. Accordingly, she claims the filing of the instant appeal to seek reversal of the default judgment was timely. We disagree.

Generally speaking, a judgment is the determination of the rights of the parties in an action and can be either interlocutory or final. La. C.C.P. art. 1841.

[7] The default judgment was entered on January 4, 2016, and the record reflects that notice of the signing of the default judgment was mailed to Carolyn the following day on January 5, 2016. Pursuant to La. C.C.P. art. 1974, the delay for applying for a new trial shall be seven days, exclusive of legal holidays. The delay for applying for a new trial commences to run on the day after the clerk has mailed the notice of judgment as required by Article 1913(C), which pertains to notice of the signing of a default judgment against a defendant such as Carolyn on whom citation was served personally. *Id.* In accordance with La. C.C.P. art. 2087, because she did not make an application for new trial, Carolyn would have had sixty days from the expiration of the delay for applying for a new trial to file a devolutive appeal.

A judgment that does not determine the merits but only preliminary matters in the course of an action is an interlocutory judgment; whereas a judgment that determines the merits, in whole or in part, is a final judgment. *Id.* The jurisdiction of appellate court extends to "final" judgments. La. C.C.P. art. 2083. A "final judgment" is appealable in all causes in which appeals are given by law, whether rendered after hearing, by default, or by reformation. La. C.C.P. art. 2083(A). A judgment of default against one defendant, not appealed from, is held to be final. *Mooring Fin. Corp. 401(K) Profit Sharing Plan v. Mitchell*, 08-1250, p. 20 (La. App. 4 Cir. 6/10/09), 15 So.3d 311, 320. While a default judgment may be attacked for procedural defects and vices of form, or ill practices, a defendant who fails to properly make an appearance of record, once properly served with the citation and petition, has received adequate notice that a legal process has been initiated against him that may affect his legal rights. *Mitchell*, 08-1250, p. 20, 15 So.3d at 320. If that defendant fails to take any action, *i.e.*, by filing a responsive pleading, then a plaintiff may proceed with obtaining a preliminary default, and then after the appropriate legal delays, a judgment of default may be properly confirmed against the defendant. *Id.*

In the instant matter, the record reflects that Carolyn was personally served with a citation and a certified copy of Green Tree's petition to enforce the promissory note and mortgage on December 11, 2014. Attached to Green Tree's petition was the original promissory note executed by Rosabell, a certified copy of the act of mortgage securing the note, and a certified copy of the assignment of the mortgage to Green Tree. Also attached to the petition were a copy of the cash sale deed evidencing August and Rosabell Edwards' original purchase of the Property, a copy of the judgment of possession rendered in the succession of August Edwards, and the affidavit of small succession executed by Carolyn *evidencing her acceptance of Rosabell's succession, including Rosabell's debts*. Green Tree's

petition prayed for judgment against Carolyn and the Heirs for the full amount of the outstanding indebtedness on the note, plus interest, costs and expenses permitted by the note. Green Tree's petition also prayed for judgment declaring that the Heirs had concurred in the mortgage, that the mortgage encumbered the entirety of the Property, and that the Heirs had inherited the Property subject to Green Tree's mortgage. Having been personally served with citation and petition, Carolyn had received adequate notice that Green Tree had initiated a legal process against her, the subject and nature of the claims being made, and the relief sought against her that could affect her rights.

Despite adequate notice, Carolyn took no action. The record reflects that she failed to file an answer or other responsive pleading to Green Tree's petition. After the delays for filing responsive pleadings had passed, Green Tree proceeded with obtaining a preliminary default against Carolyn on April 7, 2015. After the passage of more than eight months, with Carolyn (and the other Heirs that were properly served), having failed to make an appearance of record or to file a responsive pleading to the allegations and claims made in Green Tree's petition, on December 18, 2015, Green Tree moved to confirm the preliminary default. *See* La. C.C.P. art. 1701. In addition to the exhibits previously attached to its petition, Green Tree introduced into the record an affidavit of account and status as a note holder and the requisite counsel's certification in accordance with La. C.C.P. arts. 1702, 1702.1. Considering the petition, exhibits and entry of a preliminary default, on January 4, 2016, the trial court signed the default judgment rendered in favor of Ditech Financial LLC formerly Green Tree and against Carolyn (and the other four Heirs that were served).

The record evidences that notice of the default judgment was sent to Carolyn on January 5, 2016 in accordance with La. C.C.P. art. 1913(C). Thereafter, our review of the record on appeal confirms that Carolyn did not file (nor did any of

the other defendants cast in judgment) a motion for new trial or seek to annul, revise, modify, vacate, or otherwise reverse the default judgment or any of the matters decreed therein. We quote the decretal language of the default judgment in its entirety:

> IT IS ORDERED that judgment is rendered in favor of Ditech Financial LLC formerly known as Green Tree Servicing LLC and against the defendants Carolyn Edwards (XXX-XX-5609), Wayne Edwards (XXX-XX-9560), Terry Edwards Jackson (XXX-XX-9569), Ralph Edwards (XXX-XX-5228), and Emile Edwards (XXX-XX-7178) jointly and solido, in the full and true sum of $37,063.19 principal together with 6.375% per annum interest from October 1, 2008 until paid, and all allowable late charges, escrow disbursements, protection charges and reasonable attorney's fees on both principal and interest and for all court costs.
>
> IT IS ORDERED FURTHER that judgment be and is hereby rendered declaring that defendants, Carolyn Edwards, Wayne Edwards, Terry Edwards Jackson, Ralph Edwards and Emile Edwards ratified, authorized and confirmed the Mortgage dated January 28, 2004 and registered in Jefferson Parish, Louisiana as Instrument No. 10439009 MOB 4193 PAGE 430.
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> IT IS FURTHER ORDERED that the Act of Mortgage dated January 28, 2004 and registered in Jefferson Parish, Louisiana as Instrument No. 10439009 MOB 4193 PAGE 430, securing the amount on the following described property be specially recognized and maintained as encumbering the entirety of the property, including any and all interest in the property of defendants, Carolyn Edwards, Wayne Edwards, Terry Edwards Jackson, Ralph Edwards and Emile Edwards[.][8]

A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. The specific relief granted should be determinable from the judgment without reference to an extrinsic source such as a pleading or reasons for judgment. *Input/Output Marine Sys., Inc. v. Wilson Greatbatch Techs., Inc.*, 10-477, p. 12 (La. App. 5 Cir.

[8] A full legal description of the Property identical to that contained in the cash sale deed previously described hereinabove was included in the default judgment.

10/29/10), 52 So.3d 909, 915-916. The default judgment rendered against Carolyn Edwards contains all of the necessary decretal language to meet the requirements of a final judgment.

In this case, the judgment of default against Carolyn did not decide "less than all of the claims" of Green Tree against Carolyn, nor did it decide only "preliminary matters." As to Carolyn, the default judgment rendered against her wholly disposed of Carolyn's involvement in the suit. As to her, it was a final judgment. At that point, Carolyn's options were to file a motion for new trial, a petition to annul the judgment, or a motion for appeal.[9] She did nothing.

When the delays for appealing the default judgment elapsed, the judgment, and all decretal elements determined therein, became definitive against Carolyn; she may not now appeal it. She offers no substantive objection to the default judgment, but only a conclusory assertion, unsupported by the record, that the default judgment was granted without sufficient proof to establish a *prima facie* case.[10] Specifically, she argues Green Tree failed to establish a *prima facie* case that: (1) she (and/or the other Heirs) confirmed or ratified the mortgage such that the mortgage was a relative nullity, (2) the relatively null mortgage encumbered the entirety of the Property, and (3) the amount awarded was inflated due to a portion of the amounts owed having previously prescribed. Because the claim of

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[9] For sake of thoroughness, we note that while a final judgment may, as between the parties, have the substantive effect of acquiring the matter of the thing adjudged, it may nevertheless be subject procedurally to an attack on the ground of its nullity, which Carolyn alludes to in her brief. La. C.C.P. art. 2001. Under Article 2002(A)(2) of the Code of Civil Procedure, a final judgment shall be annulled if it is rendered against a defendant against whom a valid judgment by default has not been taken. Moreover, such an action to annul may be brought at any time. La. C.C.P. art. 2002(B). However, an action to annul a judgment must be brought in the trial court. La. C.C.P. art. 2006. There is no evidence in the record that Carolyn has instituted a direct action or a collateral attack to annul the default judgment in the trial court. We also note that La. C.C.P. art. 2002(A)(2) applies only to technical defects of the form of the judgment or procedure. *National Income Realty Trust v. Paddie*, 98-2063 (La. 7/2/99), 737 So.2d 1270. The failure to establish the *prima facie* case required by La. C.C.P. art. 1702 does not constitute a vice of form. *Id.* Rather, a failure of proof must be raised in a timely filed motion for new trial or timely filed appeal; it may not be raised by an action for nullity. *Id.*

[10] Our review of the record indicates that adequate supporting proof was in fact presented to the trial court by Green Tree, as documented in the record.

failure of proof can only be raised by a timely filed motion for new trial or a *timely* filed appeal – neither of which were filed in this case – we cannot consider Carolyn's failure-of-proof claim now as it comes too late.

Moreover, there are no allegations that Green Tree procured the default judgment against Carolyn by fraud or ill practices and the record does not support such a conclusion. There is no allegation that Carolyn was deprived of any legal right; she had ample opportunity to appear and assert any defense to the claims that she desired, either in the trial court or by a timely appeal. She could have contested the amount of indebtedness owed on the note or whether or not a portion owed had prescribed, the validity of the alleged relatively null mortgage, and/or whether or not the mortgage encumbered the entirety of the Property, as she seeks to do now. She availed herself of none of these options.

In the matter *sub judice*, we have no remedy to offer Carolyn because her failure to make any timely appearances resulted in a properly obtained judgment of default against her. Though she argues the trial court erred in confirming the default judgment without sufficient competent evidence to prove a *prima facie* case, a contention we note is not supported by the record, her arguments come too late. "It is not unconscionable or inequitable to enforce a default judgment even though a defendant had a valid defense but failed to timely assert it." *Design Associates, Inc. v. Charpentier*, 537 So.2d 1233, 1237 (La. App. 4 Cir. 1989); *Johnson v. Jones-Journet*, 320 So.2d 533 (La. 1975). Accordingly, Carolyn stands cast in judgment "jointly and *in solido*" for the full sum of the outstanding indebtedness on the promissory note, $37,063.19, plus interest, charges, fees and costs as provided by the note and mortgage. She is deemed to have "ratified, authorized and confirmed" the mortgage, thereby curing any relative nullity assuming one ever existed. The mortgage securing the note is further recognized

as encumbering the entirety of Carolyn's interest in the Property as of the date of the judgment, which the record reflects is 100%.[11]

There being no doubt that the January 4, 2016 default judgment was a final judgment, no longer appealable, that portion of this appeal seeking to reverse the default judgment must be dismissed. In summary, Carolyn's first and third assignments of error are without merit.

2. *The September 8, 2016 In Rem and Declaratory Judgment*

a. Validity of the Mortgage

In her second assignment of error, Carolyn avers the trial court committed legal error when it granted an in rem and declaratory judgment "that [Green Tree] had a mortgage over the property, without addressing the fact that only a single co-owner had authorized the mortgage." Carolyn's second assignment of error is also without merit.

The motion for summary judgment was filed by Green Tree against the nonresident, absentee Heirs. When suit was originally filed, a curator ad hoc was appointed by the court to represent the interests of the four nonresident, absentee Heirs, Brenda Edwards Mays, Kenneth Edwards, Sharon Edwards Wright and

[11] Carolyn accepted the succession of her mother, Rosabell, as evidenced by the affidavit of small succession signed by Carolyn on December 10, 2010, attached as an exhibit to Green Tree's petition. Acceptance of a succession obligates the successors to pay the debts of the estate. La. C.C. 961. Estate debts are charged against the property of the estate. La. C.C. art. 1421. The mortgage executed by Rosabell to secure the promissory note held by Green Tree was a debt of Rosabell's estate that Carolyn (and the other Heirs) became obligated to pay upon acceptance of Rosabell's succession. A mortgage "is an indivisible real right that burdens the entirety of the mortgaged property and that follows the property into whatever hands the property may pass." La. C.C. art. 3280. A person's actions evidencing an intent to be bound by the obligation constitute an express ratification of it. La. C.C. art. 1843. To the extent the mortgage was a relative nullity as posited by Carolyn, a relatively null contract may be confirmed or ratified. La. C.C. art. 2031. Confirmation or ratification cures the relative nullity of an obligation, which may be either express or tacit. La. C.C. arts. 1842, 1843. Acceptance of Rosabell's succession, including the debts, was a confirmation and ratification of the mortgage encumbering the entirety of the Property. Moreover, the quitclaim deeds included in the record, executed by each of the Heirs conveying to Carolyn their respective ownership interests in the Property subject to the mortgage, evidenced an acceptance of prior ownership of the Property, including debts.

Timothy Edwards, in these proceedings. Once served with citation and petition, the curator appeared and filed an answer on their behalf. Subsequently, when service upon the two remaining Heirs, Elton Edwards and August Edwards, III, could not be accomplished, on motion of Green Tree, a curator was appointed to represent their interests. Following service, the curator appeared and filed an answer on their behalf. After obtaining the default judgment against Carolyn, Wayne Edwards, Terry Edwards Jackson, Ralph Edwards and Emile Edwards, and issue having been joined as to the nonresident, absentee Heirs by virtue of the answers filed on their behalf, Green Tree moved for summary judgment against the nonresident, absentee Heirs. Carolyn was not named a defendant in the motion for summary judgment.

At some point after Green Tree's motion for summary judgment had been filed, Green Tree became aware of the quitclaim deeds executed by all of the Heirs other than Carolyn, conveying all of their respective interests in the Property subject to the mortgage to Carolyn, rendering Carolyn the sole owner of the Property subject to the mortgage. Certified copies of the quitclaim deeds were introduced into the record. At that point, since Green Tree already had a valid judgment against Carolyn, Green Tree asked the court to issue an in rem judgment only recognizing the ten quitclaim deeds as being subject to and burdened by the mortgage and as having transferred all of the interest in the Property to Carolyn, and recognizing Carolyn as the sole owner of the Property subject to the mortgage. Green Tree also requested an order dismissing the remaining Heirs and ordering that Carolyn remain as the sole defendant in the matter.

Green Tree's sole purpose for going forward with the summary judgment was to dismiss the remaining defendants that did not have a judgment against them, but who no longer had any interests in the Property, and to recognize that the

quitclaim deeds to Carolyn were made subject to the mortgage. As noted by Green Tree's counsel on the record at the hearing:

> The only reason I'm requesting a formal judgment is so that if we proceed with a foreclosure and sheriff's sale, the sheriff's office – it will be clear in the record as to why we're only going forward serving one party [as opposed to everyone else].

Carolyn does not contest the in rem judgment insofar as it recognizes her as the sole owner of the Property; this is a point she concedes. Her attack on the judgment is that it recognizes that the Property she solely owns is "subject to the mortgage." In essence, by timely appealing the summary judgment, Carolyn attempts to revive her attack regarding the validity of Green Tree's mortgage, a matter that has already been definitively determined in the default judgment rendered against her, which she failed to timely appeal. Consequently, as stated previously, Carolyn is bound by the decretal elements of the January 4, 2016 default judgment that determined the mortgage to be a valid mortgage and one that encumbers the entirety of the Property she now solely owns.

Based on our *de novo* review of the record, we find no error in the trial court's in rem judgment recognizing that the ten quitclaim deeds to Carolyn were subject to the mortgage, that Carolyn is the sole owner of the Property subject to the mortgage, and dismissing the remainder of the Heirs and the United States, leaving Carolyn as the sole remaining defendant in this case. This assignment of error is without merit.

b. Appointment of a Curator for the Nonresident Defendants

By her fourth assignment of error, Carolyn contends the trial court erred in failing to consider the controlling statutes on service of process regarding nonresident, *i.e.*, La. R.S. 13:3201 and La. R.S. 13:3204. She contends that counsel for Green Tree made no attempt to serve the nonresident Heirs by

registered or certified mail and requested the appointment of a curator without first attempting to serve them despite having knowledge of their mailing addresses.

Green Tree avers that it was not required to first attempt long arm service on the nonresident Heirs prior to seeking the appointment of the curator ad hoc to represent their interests as the nonresident Heirs were absentees. Pursuant to La. C.C.P. art. 5091(A)(1)(a), the court shall appoint an attorney to represent the unrepresented defendant on the petition or *ex parte* written motion of the plaintiff when: (1) the court has jurisdiction over the persons *or property* of the defendant, (2) the defendant is a nonresident or absentee who has not been served with process, either personally or through an agent for service of process, and (3) who has not waived objection to jurisdiction. An "absentee" is defined in La. C.C.P. art. 5251(1) as "a person who is either a nonresident of this state . . . and who has not appointed an agent for service of process in this state in the manner directed by law."

The nonresident Heirs clearly qualify as "absentees" according to the definition set forth in La. C.C.P. art. 5251(1). They are nonresidents of the State of Louisiana as a result of having moved out of the state, and nothing in the record suggests that any one of them has appointed an agent for service of process in the State of Louisiana. Whether their whereabouts were known is irrelevant since they fall squarely with the applicable definition of absentees under the Code of Civil Procedure. Accordingly, we find that counsel for Green Tree acted in accordance with La. C.C.P. art. 2674 when she requested that the trial court appoint a curator ad hoc to represent the interests of the absentee Heirs in these proceedings. Moreover, service upon the curator was made, therefore, such act constituted proper service of these absentee defendants. Accordingly, we find no error in the trial court in allowing the summary judgment to proceed against the absentee Heirs through a curator, especially in light of the fact that the in rem judgment dismissed

all of these defendants from the proceedings. This assignment is also without merit.

c. The IRS Lien

In her final assignment of error, Carolyn contends the trial court erred as a matter of law in granting an in rem judgment that purports to subordinate an IRS lien without obtaining proper service on the United States. First, we note that the in rem judgment is silent as to the IRS lien. Second, according to Green Tree, it did not request subordination of the IRS lien in its motion for summary judgment nor did it mention the lien at the hearing. The United States of America was named as a defendant in Green Tree's suit, because at the time suit was filed, an IRS lien was attached to the Property. According to the record, Green Tree has dismissed the United States as a defendant and no longer seeks to pursue a claim against it. This assignment of error also lacks merit.

For the foregoing reasons, we dismiss the appeal, in part, insofar as it seeks a reversal of the January 4, 2016 default judgment. The in rem judgment rendered by the trial court on September 8, 2016 is affirmed.

APPEAL DISMISSED, IN PART; AFFIRMED, IN PART

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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 **NOVEMBER 15, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-214

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JUNE B. DARENSBURG (DISTRICT JUDGE)
TABITHA MANGANO (APPELLEE)

MAILED

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