

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-16

U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR CHESTER ROAD FUNDING TRUST

VERSUS

GEORGETOWN ASSOCIATES MEMBER, LLC

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 866-023, DIVISION "O"
HONORABLE DANYELLE M. TAYLOR, JUDGE PRESIDING

May 27, 2026

MARC E. JOHNSON
JUDGE

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and Scott U. Schlegel

REVERSED IN PART;
AFFIRMED AS AMENDED

MEJ

CONCURS WITH REASONS

JJM

CONCURS FOR THE REASONS ASSIGNED BY MOLAISON, J.

SUS

TRUE COPY



JALISA WALKER
DEPUTY CLERK

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US BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS TRUSTEE FOR CHESTER ROAD
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JOHNSON, J.

In this foreclosure action case, Defendant-Appellant, Georgetown Associates Member, LLC (“Georgetown”), seeks review of the 24th Judicial District Court’s September 9, 2025 judgment in favor of Plaintiff-Appellee, U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee for Chester Road Funding Trust (“U.S. Bank”). The court’s judgment awarded U.S. Bank all alleged sums due pursuant to the Promissory Note and declared the Mortgage enforceable and entitled to payment with preference and priority. For the following reasons, we reverse the portion of the judgment declaring the mortgage enforceable and affirm the judgment as amended.

FACTS AND PROCEDURAL HISTORY

This case is a foreclosure action by U.S. Bank by ordinary process against the Appellant, Georgetown Associates Member, LLC, to enforce a note and mortgage executed by Appellant. On June 13, 2025, Plaintiff-Appellee, U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee for Chester Road Funding Trust (“U.S. Bank”) filed a Petition to Enforce Security Interest by Ordinary Process against Defendant-Appellant, Georgetown Associates Member LLC (“Georgetown”). The attachments to the Petition were: (1) a Promissory Note, (2) a Mortgage, and (3) an Assignment of Mortgage. Appellant avers the Petition was served on Georgetown through its registered agent on July 7, 2025.

On August 27, 2025, U.S. Bank filed a Motion for Confirmation of Default Judgment and Certification of Proof as Required by La. Code of Civil Procedure Art. 1702.1. The only attachments to the Motion for Confirmation of Default Judgment were: (1) the Promissory Note and (2) an Affidavit of Kenisha Mathis of Selene Finance LP. There were no attachments to the Affidavit of Kenisha Mathis. The Motion for Confirmation of Default Judgment came before the district court on September 9, 2025. Georgetown did not appear in court on that date. The only

evidence submitted with the Motion for Confirmation of Default Judgment was the Promissory Note and the Affidavit of Kenisha Mathis.

On September 9, 2025, the district court entered judgment in favor of U.S. Bank and against Georgetown for all alleged sums due pursuant to the Promissory Note and recognizing and declaring the Mortgage enforceable and entitled to payment with preference and priority.

Thereafter, on November 17, 2025, Georgetown filed a Motion for Devolutive Appeal, which was granted by the district court on November 19, 2025.

ASSIGNMENTS OF ERROR

1) The district court erred in granting the Motion for Confirmation of Default Judgment without any evidence that the signatory of the Promissory Note and Mortgage was ever authorized to do so by Georgetown Associates Member LLC.

2) The district court erred in granting the Motion for Confirmation of Default Judgment recognizing and declaring the Mortgage enforceable and entitled to payment with preference and priority without any evidence of the Mortgage submitted with the Motion for Confirmation of Default Judgment.

Georgetown argues that U.S. Bank failed to meet the requirements of La. C.C.P. art. 1702.1 necessary to obtain a valid confirmation of default judgment. Specifically, it urges that the Bank failed to submit evidence that Shalom Weinberger, who signed the promissory note, was an authorized agent or representative of Georgetown, and the prima facie evidence required to support its motion was deficient. Further, the district court erred when it declared the Mortgage enforceable and granted default judgment in favor of the Bank; a copy of the Mortgage was not attached to the Motion, and the Bank did not pray for such relief.

The Bank counters that the only evidence required for it to establish its case was the presentation of the original note. Further, the burden shifted to Georgetown to show payment or another defense, but Georgetown admits it did not appear in court, and therefore, presented no defense. The Bank surmises the district court

properly granted the Motion for Default Judgment and rendered judgment summarily in its favor. The Bank also avers that default judgments are reviewed for the abuse of discretion and not *de novo*, as Georgetown asserts. It urges that the appeal be dismissed at Appellant's costs.

LAW AND ANALYSIS

“In reviewing default judgments, the appellate court is restricted to determining the sufficiency of the evidence offered in support of the judgment.” *Springwood Homeowner's Ass'n, Inc. v. Gutherie-Brown*, 24-202, p. 6 (La. App. 4 Cir. 11/19/24), 402 So.3d 42, 46, *quoting Arias v. Stolthaven New Orleans, LLC*, 08-1111 (La. 5/5/09), 9 So.3d 815, 818. Generally, an appellate court's review of a default judgment is governed by the manifest error standard of review. *ASI Fed. Credit Union v. Leotran Armored Sec., LLC*, 18-341, p. 8 (La. App. 5 Cir. 11/7/18), 259 So.3d 1141, 1147–48, *citing Arias, supra*. However, when the court of appeal “finds that a reversible legal error or manifest error of material fact was made in the trial court, it is required to redetermine the facts *de novo* from the entire record and render a judgment on the merits.” *Id.* Although a presumption exists that the record supports a default judgment, the presumption does not exist when the record upon which the judgment is rendered indicates otherwise. *Id.*

If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or by the court, and the plaintiff establishes a prima facie case by competent and admissible evidence that is admitted on the record, a default judgment in favor of the plaintiff may be rendered, provided that notice that the plaintiff intends to obtain a default judgment is sent if required by this Paragraph, unless such notice is waived. La. C.C.P. art. 1702(A)(1). When the sum is due on an open account or a promissory note or other negotiable instrument, an affidavit of the 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. La. C.C.P. art. 1702(B)(3). No hearing is required in proceedings where the sum is due on a promissory note unless the judge, in her discretion, directs such a hearing to be held. La. C.C.P. art. 1702(C).

A mortgage is a nonpossessory right created over property to secure the performance of an obligation. La. C.C. art. 3278; *Stormfield Capital Funding I, LLC v. 1911 Mandeville, LLC*, 24-554, p. 6 (La. App. 4 Cir. 6/6/25), 414 So.3d 1240, 1244. It is an accessory obligation that creates a real right to cause the encumbered property to be seized and sold and to have the proceeds applied toward the satisfaction of the primary obligation. La. C.C. arts. 3279 and 3282; *Stormfield Capital Funding I, supra*. “A default judgment shall not be different in kind from that demanded in the petition.” *Sarasota, CCM, Inc. v. Supreme Quality Transp., LLC*, 23-0658, p. 6 (La. App. 4 Cir. 3/6/24), 385 So.3d 307, 312, citing La. C.C.P. art. 1703. Further, “[t]he amount of damages awarded shall be the amount proven to be properly due as a remedy.” *Id.*

We conclude that Georgetown’s second assignment of error has merit – the Bank did not prove a prima facie case sufficient for the court to declare the mortgage was enforceable. Attaching documents to the petition but failing to attach them when seeking a default judgment is fatal to the case. *See Roll-Lite Overhead Doors, a Div. of Architectural Specialties Co., Inc. v. Clover Contractors, Inc.*, 527 So.2d 500, 503 (La. App. 5th Cir. 1988), *writ denied*, 532 So.2d 115 (La. 1988) (finding that no connexity was established between invoices only presented as attachments to the plaintiff’s petition and the affidavit of correctness; therefore, the invoices were never presented in the guise of competent evidence, and the affidavit without invoices could not constitute a prima facie case.).

Here, U.S. Bank attached the Mortgage and Promissory Note to the petition but only attached the promissory note, along with the affidavit of correctness, to the motion to confirm default judgment. Although the Bank’s motion incorporated the

mortgage by stating the entire record of the case was “hereby incorporated by the reference herein”, we find that statement is not sufficient to meet the statutory requirements of La. C.C.P. art. 1702.1.

We find that a prima facie case of the veracity of the mortgage cannot be made without attaching a copy of the actual mortgage to the motion. Thus, we find that, although the trial court stated in the judgment that it considered the record in the case, the failure to attach a copy of mortgage pursuant to La. C.C.P. art. 1702.1(A) prevents U.S. Bank from establishing a prima facie case regarding the mortgage. *See Roll-Lite Overhead Doors, supra; Sarasota, CCM, Inc. v. Supreme Quality Transp., LLC*, 23-0658, p. 9 (La. App. 4 Cir. 3/6/24), 385 So.3d 307, 314 (finding a personal guarantee attached to the Petition, but not the motion to confirm default judgment where no hearing was held to introduce the entire record was a fatal error in its efforts to confirm default judgment against the sole proprietor of the LLC regarding the mortgage.). Because U.S. Bank did not sufficiently prove the accessory obligation executed by Georgetown in favor of U.S. Bank, we find that the district court could not provide the relief requested related to the mortgage. Accordingly, we find U.S. Bank has presented sufficient evidence to establish Georgetown’s debt via the promissory note and the affidavit of the correctness attached to the motion for default judgment; prima facie proof under La. C.C.P. art 1702.1. Further, because the demand is based upon a promissory note, no proof of any signature thereon shall be required. *Id.* Lastly, the promissory note was the primary obligation and the Bank was not required to collect on the debt by enforcing the mortgage note; the mortgage note was merely “an auxiliary obligation.” *See Whitney Nat. Bank v. Jeffers*, 573 So.2d 1262, 1267 (La. App. 4th Cir. 1991). Therefore, Georgetown’s first assignment of error is without merit.

DECREE

Considering the foregoing, we reverse the portion of the judgment declaring

the mortgage enforceable. The judgment is otherwise affirmed as amended. All costs of the appeal are to be assessed to Defendant-Appellant, Georgetown Associates Member, LLC.

REVERSED IN PART;
AFFIRMED AS AMENDED

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MOLAISON J., CONCURS WITH REASONS

I agree with the majority's decision to reverse the trial court's ruling, in part, regarding the default judgment on U.S. Bank's mortgage. I write separately to recognize that Louisiana's appellate courts remain divided on whether a party may incorporate documents attached to a petition by reference in a motion for default.

La. C.C.P. art. 1702(A) states that, before the court may render a default judgment, the plaintiff must present competent and admissible evidence on the record to establish a *prima facie* case. When the plaintiff seeks a default judgment without a hearing in open court, La. C.C.P. art. 1702.1(A) requires the plaintiff to submit a written request for default judgment. This request must certify that the suit involves, among other things, a conventional obligation and that the necessary invoices, affidavit, note, or check, or a certified reproduction, **are attached, along with any proof** required by law. Here, U.S. Bank followed La. C.C.P. art. 1702.1 for the promissory note portion of its default motion. However, U.S. Bank did not follow the same requirement for the mortgage and instead incorporated the mortgage by reference from the original petition.

I believe that parties must follow the mandatory guidelines of articles 1702 and 1702.1. The Supreme Court in *Sessions & Fishman v. Liquid Air Corp.*, 616 So. 2d 1254, 1261-62 (La. 1993), explained that the plaintiff seeking a default judgment must prove the basis of its demand. Because no party objects at a default confirmation, both the plaintiff and the trial judge must remain vigilant to ensure that admissible evidence supports the judgment and establishes a *prima facie* case. *Arias v. Stolthaven New Orleans, L.L.C.*, 08-1111 (La. 5/5/09), 9 So. 3d 815, 820, citing George W. Pugh, Robert Force, Gerald A. Rault, Jr., & Kerry Triche, *Handbook on Louisiana Evidence Law* 677 (2007). When a plaintiff introduces evidence as part of a motion to confirm a default in an action on a conventional obligation, the court can determine damages with reasonable certainty. This practice also promotes judicial efficiency on appeal by making clear what evidence the trial court relied on when granting the default judgment. See *Arias v. Stolthaven New Orleans, L.L.C.*, 08-1111 (La. 5/5/09), 9 So. 3d 815, 818, citing *Bordelon v. Sayer*, 01-0717, p. 3 (La. App. 3 Cir. 3/13/02), 811 So. 2d 1232, 1235, *writ denied*, 02-1009 (La. 6/21/02), 819 So. 2d 340.

I recognize that other appellate courts in Louisiana have taken different approaches to this issue. However, I believe that strictly interpreting the requirements in the default judgment statutes provides the best practice for both counsel and trial courts. Therefore, I concur with the majority's opinion.

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**SCHLEGEL, J., CONCURS FOR THE REASONS ASSIGNED BY
MOLAISON, J.**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
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 **MAY 27, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-CA-16

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE DANYELLE M. TAYLOR (DISTRICT JUDGE)

ASHLEY E. MORRIS (APPELLEE)

CANDACE A. COURTEAU (APPELLEE)

COREY E. DUNBAR (APPELLANT)

DAVID A. SAFRANEK (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED