

Texas Industries, Inc. v. Sanchez, 525 S.W.2d 870 (1975)


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525 S.W.2d 870
Supreme Court of Texas.

TEXAS INDUSTRIES, INC., Petitioner,
v.
Henry SANCHEZ, Respondent.

No. B—5293.
|
July 16, 1975.

Synopsis

Defendant instituted bill of review proceeding to set aside judgment rendered in favor of plaintiff. The 191st District Court, Dallas County, Spencer Carver, J., set aside the default judgment and rendered judgment that the plaintiff take nothing. The Court of Civil Appeals, Fifth Supreme Judicial District,  [521 S.W.2d 133](#), Guittard, J., affirmed. The plaintiff applied for writ of error. The Supreme Court held that proof of defendant not having been served with citation obviates the necessity of pleading and proving that the defendant was prevented from making his meritorious defense by fraud, accident, or wrongful act of the opposite party in order to obtain bill of review setting aside default judgment.

Application denied.

West Headnotes (1)

[1] **Judgment** Pleading and Evidence

Proof of the defendant not having been served with citation obviates the necessity of pleading and proving that the defendant was prevented from making his meritorious defense by fraud, accident, or wrongful act of the opposite party in order to obtain bill of review setting aside

default judgment.

[29 Cases that cite this headnote](#)




Attorneys and Law Firms

***871** Bagby, McGahey, Ross & DeVore, Phillip C. McGahey and Stewart DeVore, Jr., Arlington, for petitioner.

Bean, Francis, Ford, Francis & Wills, Judson Francis, Jr., Dallas, Joe W. Walsh & Associates, Lee Arnett, Brownsville, for respondent.

Opinion

PER CURIAM.

This is an appeal from a Bill of Review judgment setting aside a default judgment against the defendant and rendering a judgment that plaintiff take nothing. The court of civil appeals affirmed.  [521 S.W.2d 133](#). In denying the application for writ of error, no reversible error, we specifically approve the holding of the court of civil appeals that proof of defendant not having been served with citation obviates the necessity of pleading and proving the second Hagedorn requirement: that the defendant was 'prevented from making (his meritorious defense) by fraud, accident, or wrongful act of the opposite party . . .'.¹ See  [Petro-Chemical Transport, Inc. v. Carroll](#), 514 S.W.2d 240, 243—244 (Tex.1974) and  [Hanks v. Rosser](#), 378 S.W.2d 31 (Tex.1964).

All Citations

525 S.W.2d 870

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Footnotes

- ¹  [Alexander v. Hagedorn, 148 Tex. 565, 226 S.W.2d 996 \(1950\).](#)