

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0064

LORAIN RATHMAN

VERSUS

EMERALD FOREST L.P., ET AL.

Judgment rendered **NOV 07 2014**

Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2010-13830
Honorable Scott Gardner, Judge

LORAIN RATHMAN
COVINGTON, LA

FRED BELCHER, JR.
BATON ROUGE, LA

PRO SE
PLAINTIFF-APPELLEE

ATTORNEY FOR
DEFENDANTS-APPELLANTS
EMERALD FOREST, L.P., ET AL.

BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

PETTIGREW, J.

This appeal is taken from a July 25, 2013 judgment on a rule for contempt filed by plaintiff, Loraine Rathman, against defendant, Emerald Forest Condominium Association, for its failure to comply with a consent judgment previously entered into by the parties on February 14, 2012, and signed by the trial court on March 7, 2012. Emerald Forest Condominium Association now appeals, arguing that the July 25, 2013 judgment made substantive amendments to the original consent judgment, in contravention of La. Code Civ. P. art. 1951, and is absolutely null and without legal effect. Finding the judgment at issue to be nonappealable, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

Loraine Rathman ("Ms. Rathman") filed suit in June 2010, against defendants, Emerald Forest Condominium Association, Emerald Forest, L.P., Belcher Management, L.L.C., Lance B. Belcher, and Fred H. Belcher (hereinafter collectively referred to as "Emerald Forest"), wherein she sought damages for repairs due to an alleged leak in the garage roof of her condominium. The matter was set for trial on February 14, 2012, but the parties reached an agreement and entered into a stipulated consent judgment as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, Emerald Forest Condominium Association, Inc. shall repair the roof/chimney over the Plaintiff, Loraine Rathman's condominium unit 14204 of Emerald Forest Condominium eliminating all water leaks after determining the point of entry using the services of Western Waterproofing all at the expense of Emerald Forest Condominium Association, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Emerald Forest Condominium Association, Inc. shall repair the area near the resident garage door entrance which also has experienced water leaks after determining the point of entry using the services of Western Waterproofing all at the expense of Emerald Forest Condominium Association, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Emerald Forest Condominium Association, Inc. shall also repair the damage to the interior of the garage in Plaintiff, Loraine Rathman's condominium unit 14204 of Emerald Forest Condominium using the services of Western Waterproofing all at the expense of Emerald Forest Condominium Association, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Emerald Forest Condominium Association, Inc. shall also reimburse Plaintiff, Loraine Rathman, for all costs of this proceeding and pay the sum of \$4,750.00 towards her damages and the costs of her experts.

The consent judgment was signed by the trial court on March 7, 2012.

On August 20, 2012, Ms. Rathman filed a pro se motion to amend the consent judgment with the trial court.¹ Ms. Rathman argued that Western Waterproofing had withdrawn from the project and that there had been increased damage to her home. At an October 18, 2012 hearing on the motion to amend, Ms. Rathman argued as follows:

The reason I thought it might be amendable, even though I knew it was a final judgment, was based on Louisiana Civil Code of Procedure 1951. And in the consent judgment, there was full authority given to a contractor, Western [Waterproofing], to go ahead and do what they needed to do in order to resolve the leakage problem in my condominium complex.

They had submitted a proposal to the defendants to sign and the defendants did not sign that and, therefore, then, the Western [Waterproofing] withdrew. And to me, it appears that the defendants changed the consent judgment. No contractor could go ahead and do it.

The trial court denied Ms. Rathman's motion to amend, finding that it did not have jurisdiction to make substantive amendments to a final judgment.

On February 28, 2013, Ms. Rathman filed a rule for contempt, asserting that Emerald Forest was in contempt for disobeying the consent judgment. Ms. Rathman argued that because Emerald Forest refused to sign the contract with Western Waterproofing, Western Waterproofing withdrew, depriving her of her "legal right for resolution of the leakage problems for yet another year, thereby increasing the probability of additional damage to her home."

The matter proceeded to a hearing on June 27, 2013, at which time the trial court heard testimony from a contractor employed by Western Waterproofing and the executive director of Emerald Forest Condominium Association. After considering the

¹ Although Ms. Rathman did not enjoy uninterrupted representation during the proceedings below, the record does reflect that she has been represented by several different attorneys since the inception of her lawsuit. In fact, she was represented by counsel when the initial petition for damages was filed and when the original consent judgment was agreed upon by the parties.

evidence presented, the trial court ruled in favor of Ms. Rathman, issuing the following judgment on July 25, 2013:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the further obligation, absent Western Waterproofing, is that the Emerald Forest Condominium Association shall repair the three areas in the *Consent Judgment*. And for that reason any further rulings on the contempt citation are deferred, giving the Emerald Forest Condominium Association ninety (90) days in which to engage a contractor of its choosing, in order to perform the remaining viable clause of the *Consent Judgment*.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that to make sure the parties are operating in good faith--that is, since Western Waterproofing is no longer the named contractor, because they are not going to perform this work--that the parties are ordered to demonstrate good faith in securing a reasonable contractor, approving a reasonable contractor.

The Court provided a status date of September 25, 2013 on the contempt citation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in the sense that this condition of Western being the provider of both the investigative services, as well as the repair services, that is an impossible condition at this point.

It is from this judgment that Emerald Forest has appealed, arguing that the trial court abused its discretion in making substantive alterations to the consent judgment in violation of La. Code Civ. P. art. 1951.²

DISCUSSION

On February 18, 2014, this court, *ex proprio motu*, issued a rule to show cause why the instant appeal should not be dismissed because the appealed judgment appeared to be a nonappealable ruling. Emerald Forest responded to the court's rule with a brief addressing the issue. Ms. Rathman did not respond. On June 2, 2014, the rule to show cause was referred to the merits.

² Article 1951 provides as follows:

On motion of the court or any party, a final judgment may be amended at any time to alter the phraseology of the judgment, but not its substance, or to correct errors of calculation. The judgment may be amended only after a hearing with notice to all parties, except that a hearing is not required if all parties consent or if the court or the party submitting the amended judgment certifies that it was provided to all parties at least five days before the amendment and that no opposition has been received.

A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled; it may be interlocutory or final. La. Code Civ. P. art. 1841. Under Louisiana law, a final judgment is one that determines the merits of a controversy, in whole or in part. In contrast, an interlocutory judgment does not determine the merits, but only preliminary matters in the course of an action. La. Code Civ. P. art. 1841. An interlocutory judgment is appealable only when expressly provided by law. La. Code Civ. P. art. 2083(C).

In its brief on the appealability of the trial court's July 25, 2013 judgment, Emerald Forest presents the following argument. First, it argues that the original consent judgment between the parties was executed with the intention of extinguishing the litigation and, as such, was a final judgment in accordance with Article 1841. Next, Emerald Forest asserts that the trial court's July 25, 2015 judgment constitutes a substantive amendment of the consent judgment. And, finally, Emerald Forest notes that because the proper procedural vehicle in which to challenge a substantive amendment to a final judgment is an appeal, its timely filed appeal of the trial court's July 25, 2013 judgment is properly before this court for review.

We have reviewed the record before us and find no merit to Emerald Forest's arguments. We conclude the trial court's July 25, 2013 judgment was not a substantive amendment to the consent judgment, but rather an attempt to enforce the consent judgment through a rule for contempt. The July 25, 2013 judgment was not appealable. The judgment at issue did not decide the merits of the controversy, in whole or in part, and therefore, is interlocutory pursuant to Article 1841 as no judgment of contempt was actually rendered by the trial court.

CONCLUSION

For the above and foregoing reasons, the instant appeal is dismissed at Emerald Forest's cost.

APPEAL DISMISSED.