

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 0352

ROSEWOOD ENTERPRISES, INC.

VERSUS

ROSEWOOD DEVELOPMENT, LLC, STEPHEN R. COLSON,
AND S. JAY THOMAS

Judgment Rendered: MAR 06 2017

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Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension, Louisiana
Trial Court Number 109612

Honorable Jessie M. LeBlanc, Judge

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

WELCH, J.

This is the appeal of a motion for summary judgment granted in favor of the plaintiff/appellee, Rosewood Enterprises, Inc. (“Rosewood Enterprises”) against the defendant/appellant, Rosewood Development, LLC (“Rosewood Development”). For the following reasons, we dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

On March 21, 2014, Rosewood Enterprises filed a “Petition to Enforce Note, Mortgage and Personal Guaranty” naming as defendants, Rosewood Development, S. Jay Thomas (“Thomas”), and Stephen R. Colson (“Colson”). Based on a series of note transfers, stock transfers, and consent judgments, Rosewood Enterprises’ petition alleged it was the holder and owner of a promissory note dated September 6, 2007, executed by Rosewood Development in favor of Charlotte Venable (“note”). According to the petition, the note was secured by a mortgage on certain immovable property dated September 7, 2007, executed by Rosewood Development in favor of Venable (“mortgage”).

Rosewood Enterprises alleged that Rosewood Development had defaulted under the terms of the note and mortgage and prayed that the note be enforced on an *in rem* basis, in the amount of the principal, plus accrued interest, late charges, and other costs and expenses incurred in connection with the suit. The defendants, Thomas and Colson, were alleged to each be liable for the payment of \$400,000.00 of the debt evidenced by the note pursuant to a personal guaranty executed in conjunction with the note.

Attached to the petition was a copy of the note. The note evidenced a principal amount of indebtedness of \$2,149,080.00, provided for an annual interest rate of 7.5% on “matured, unpaid amounts.” Under the terms of the note, Rosewood Development agreed to pay monthly payments, with an initial monthly

payment in the amount of \$14,443.75, due 60 days from the date of the note.

Regarding monthly payments, the note provided, in pertinent part:

BORROWER shall make these payments every month until it has paid all of interest and any other charges described below that it may owe under this Note. BORROWER'S monthly payments shall be applied first to late charges, then to interest then to principal. If, on **31 MARCH 2009**, BORROWER still owes amounts under this Note, BORROWER shall pay those amounts in full on that date, which is called the "maturity date".

In the event of an overdue payment, the note provided as follows:

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any payment within **five (5)** calendar days after the date it is due, Borrower will pay a late charge to the Note Holder. The amount of the charge will be five percent (**5%**) of the overdue payment. Borrower will pay this late charge promptly but only once on each late payment. This late charge is to compensate the Note Holder for their inconvenience and is not to be considered additional interest.

Additionally, the note granted the note holder "the right to be paid back by Borrower all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney fees."

On March 4, 2015, Rosewood Enterprises filed a motion for summary judgment against Rosewood Development seeking to be declared the holder of the note, and entitled to enforce the note and mortgage on the grounds that Rosewood Development had defaulted on its obligations under the note and mortgage and, despite amicable demand, had failed to make any payments on the note. Following an August 24, 2015 hearing, the trial court granted Rosewood Enterprises' motion for summary judgment. On October 15, 2015, a written judgment was rendered by the trial court. Rosewood Development filed a devolutive appeal. Thomas, although not a party to the motion for summary judgement, also filed an appeal

with this court challenging the granting of the summary judgment in favor of Rosewood Enterprises.¹

On April 6, 2016, this court issued a rule to show cause, remanding the matter to the trial court for clarification as the judgment appeared to be a partial summary judgment requiring a designation of finality under La. C.C.P. art. 1915(B), and also appeared to lack decretal language dismissing or disposing of the claims of the petitioner. Following remand, the trial court rendered an amended judgment dated May 3, 2015. The amended judgment decreed that the judgment was a final judgment under La. C.C.P. art. 1915(A) because the granting of the motion for summary judgment resolved the merits of all of the issues between Rosewood Enterprises and Rosewood Development. See La. C.C.P. art. 1915(A)(3).²

LAW AND DISCUSSION

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. **Texas Gas Exploration Corp. v. Lafourche Realty Co., Inc.**, 2011-0520 (La. App. 1st Cir. 11/9/11), 79 So.3d 1054, 1059, writ denied, 2012-0360 (La. 4/9/12), 85 So.3d 698. This court's appellate jurisdiction extends to "final judgments." La. C.C.P. arts. 1918 and 2083; **Ball v. Heritage Manor of Mandeville**, 2006-1379 (La. App. 1st Cir. 5/4/07), 961 So.2d 414, 415; **Carter v. Williamson Eye Center**, 2001-2016 (La. App. 1st Cir. 11/27/02), 837 So.2d 43, 44. A final judgment must contain decretal language. **Ball**, 961 So.2d at 415. Louisiana Code of Civil Procedure article 1918 states that "[a] final judgment shall be identified as such by appropriate language."

¹On May 27, 2016, Rosewood Enterprises filed a motion to dismiss Thomas' appeal on the basis that it was untimely. Based on the dismissal of the appeal for lack of subject matter, we pretermitted addressing the motion to dismiss.

² On August 8, 2016, another panel of this court referred the rule to show cause to this panel for final determination. **Rosewood Enterprises, Inc. v. Rosewood Development, LLC**, 2016-0352 (La. App. 1st Cir. 8/8/16)(unpublished writ action).

It is well settled that a final judgment must be precise, definite, and certain. La. C.C.P. art. 1918 and Official Revision Comment (a); **Laird v. St. Tammany Parish Safe Harbor**, 2002-0045 (La. App. 1st Cir. 12/20/02), 836 So.2d 364, 365. Generally, a final judgment 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. **Carter**, 837 So.2d at 44. The amount of the recovery awarded by a judgment must be stated in the judgment with certainty and precision, so that a third person is able to determine from the judgment the party cast and the amount owed without reference to other documents in the record or extrinsic sources. See **Vanderbrook v. Coachmen Industries, Inc.**, 2001-0809 (La. App. 1st Cir. 5/10/02), 818 So.2d 906, 913-914; see also **Costanza v. Snap-On Tools**, 2013-0332 (La. App. 1st Cir. 3/5/14)(unpublished opinion).

Upon examination of the appellate record, we find that it does not contain a valid, final judgment, and this court lacks appellate jurisdiction. With regard to the specific relief requested, the amended judgment provides, in pertinent part:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion for summary judgment is **GRANTED**, and the Court finds in favor of Plaintiff Rosewood Enterprises, declaring that Rosewood Enterprises is the current holder of that certain note dated September 6, 2007 (the “Note”) in the principal amount of \$2,149,080 plus accrued interest of 7.5% per annum until paid, and that, as current holder, Rosewood Enterprises is entitled to enforce the Note;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is hereby rendered against Rosewood Development and in favor of Rosewood Enterprises in the principal amount under the Note of \$2,149,080, plus accrued interest of 7.5% per annum until paid, plus late charges in the amount of 5% of the overdue payments, plus reasonable attorney fees and costs and expenses of collection, all as provided for in the Note and as prayed for in the Motion for Summary Judgment (the “Judgment Amount”);

The amended judgment is fatally defective because the amount of recovery awarded is not stated with certainty and precision and the determination of the

specific amount requires reference to the extrinsic source of the note. See Green v. Lee, 2016-179 (La. App. 5th Cir. 12/7/16), 206 So.3d 425, 427.

With regard to late fees awarded, the note requires payments, both monthly and lump sum at maturity, and provides that a late charge of 5% is due on “any payment” not received within 5 days of its due date. Thus, for the amount of late charges owed to be stated with any certainty, the judgment must specify either a total amount of late charges owed, or set forth information allowing for the calculation of late charges without necessitating reference to the note or other extrinsic sources. Additionally, the judgment awards Rosewood Enterprises “reasonable attorney fees and costs and expenses of collection, all as provided for under the note.” However, no specific amount or percentage of attorney fees is identified in the judgment, nor can the amount be determined from the judgment, as a third party cannot discern the amount awarded from the face of the judgment.

Since the record in this matter does not contain a valid final judgment, we conclude that this court lacks subject matter jurisdiction, and therefore, we dismiss this appeal and remand this matter to the trial court for further proceedings.³ **Gaten v. Tangipahoa Parish School System**, 2011-1133 (La. App. 1st Cir. 3/23/12), 91 So.3d 1073, 1074; see also **Van ex rel. White v. Davis**, 2000-0206 (La. App. 1st Cir. 2/16/01), 808 So.2d 478, 485. The assessment of costs of this appeal are to await a final judgment in this case.

APPEAL DISMISSED; REMANDED.

³ Since we are dismissing the appeal for lack of final judgment, we do not reach the merits of the ruling on the motion for summary judgment. However, we wish to express grave concerns regarding the granting of a summary for judgment to enforce a promissory note where it cannot be confirmed that the original note was ever entered or supplemented into the record.