

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

2018 CW 0418

BEALL & THIES, LLC

VERSUS

CIOX HEALTH, LLC

Judgment rendered: DEC 20 2018

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On Appeal from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. C657024, Div. / Sec. 25

The Honorable Wilson E. Fields, Judge Presiding

\* \* \* \* \*

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**BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.**

*WJC by  
EAT*  
Crain J. Conner

*DMH  
on file*  
McDonald J. Conner

**HOLDRIDGE, J.**

Beall & Thies, LLC, appeals a trial court judgment that granted summary judgment in its favor. Recognizing that this court has only supervisory jurisdiction in this case, we convert the appeal to an application for supervisory writs but do not consider it because the application is untimely.

**FACTUAL AND PROCEDURAL HISTORY**

On April 11, 2017, the plaintiff filed a “Petition for Civil Penalties, Attorney’s Fees, and Costs pursuant to La[.] R.S. 40:1165.1” against Ciox Health, a third party medical record retrieval service. In its petition, the plaintiff alleged that it requested medical records from the defendant, and the defendant responded that it had no medical records for particular patients, but still charged the plaintiff. The plaintiff further alleged that it was invoiced for ten charges by the defendant that was in violation of La. R.S. 40:1165.1. The plaintiff argued that La. R.S. 40:1165.1 provided that a medical record provider shall correct the violation within three days. However, if the medical record provider did not correct the unauthorized charge within fifteen days, each violation of the billing restriction warranted a civil penalty of \$500.00.

The defendant answered the plaintiff’s petition, denying all claims and asserted a reconventional demand for attorney fees and court costs under La. C.C.P. art. 863.<sup>1</sup> On September 11, 2017, the plaintiff filed a motion for summary judgment arguing that no genuine issue of material fact remained as to the defendant’s violation of La. R.S. 40:1165.1 and that it was entitled to judgment as

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<sup>1</sup> The reconventional demand was erroneously captioned as a counterclaim; however, a pleading is governed by its substance rather than its caption and must be construed for what it really is, not for what it is erroneously designated. Belser v. St. Paul Fire and Marine Ins. Co., 542 So.2d 163, 165-66 (La. App. 1 Cir. 1989). There is no dispute that the pleading is, substantively, a reconventional demand. Bihm v. Deca Systems, Inc., 2016-0356 (La. App. 1 Cir. 8/8/17), 226 So.3d 466, 474, n.3.

a matter of law. In support of its motion for summary judgment, the plaintiff submitted several exhibits, which included copies of some of the invoices.

On October 11, 2017, the defendant filed a peremptory exception raising the objection of no cause of action or in the alternative, a motion for summary judgment. The defendant alleged that five of the ten invoices were cancelled prior to its receipt of a certified letter from the plaintiff on March 9, 2017. The defendant further stated that the remaining five invoices were cancelled by March 22, 2017. Therefore, the defendant argued that the trial court should grant its motion for summary judgment and dismiss all claims against it because the plaintiff had no claim. In support of its motion for summary judgment, the defendant submitted the ten invoices and the affidavit of Tarun Kabaria, a Senior Vice President of Operations for the defendant, who stated that on March 9, 2017, the defendant received a certified letter from the plaintiff alleging that the ten invoices violated La. R.S. 40:1165.1. Ms. Kabaria confirmed that all ten invoices were either cancelled or written off prior to the plaintiff filing its petition.

The plaintiff filed a memorandum opposing the defendant's motion for summary judgment, arguing that it suffered damages "significant enough to warrant the creation of the relevant statutory provision providing civil penalties under such circumstances." The plaintiff further argued that it was entitled to civil penalties due to the defendant's failure to notify it of the cancellations of the invoices.

On October 23, 2017, the trial court held a hearing on the plaintiff's motion for summary judgment. On October 30, 2017, the trial court ruled from the bench and granted the plaintiff's motion. On December 5, 2017, the trial court signed a judgment in accordance with its oral ruling, granting the plaintiff's motion for

summary judgment, but did not award attorney's fees, costs, or civil penalties to the plaintiff. Notice of the judgment was sent to the parties on December 13, 2017.

On December 11, 2017, the trial court was scheduled to hold a hearing on the defendant's peremptory exception raising the objection of no cause of action or in the alternative, a motion for summary judgment. The matter was passed without date. On February 1, 2018, the plaintiff devolutively appealed the December 5, 2017 judgment.

### **VALIDITY OF THE DECEMBER 5, 2017 JUDGMENT**

After the record was lodged with this court, an order was issued directing the parties to show cause why the appeal should not be dismissed because the December 5, 2017 judgment appeared to be a non-appealable ruling. Specifically, the order stated that the judgment was not considered final because it "vaguely indicate[d] that the [p]laintiff [was] not obligated to pay 'the subject invoices,' without specifically identifying those invoices. Thus, reference to ... document[s] outside the judgment and that [were] not attached to the judgment would be required to ascertain the relief afforded by the judgment." Both parties submitted briefs in response to the order, and the rule to show cause was referred to this panel for decision.

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. Tower Credit, Inc. v. Bradley, 2015-1164 (La. App. 1 Cir. 4/15/16), 194 So.3d 62, 64. Our appellate jurisdiction extends to "final judgments." See La. C.C.P. art. 2083. A judgment must be precise, definite, and certain. Laird v. St. Tammany Parish Safe Harbor, 2002-0045 (La. App. 1 Cir. 12/20/02), 836 So.2d 364, 365. Moreover, a final appealable 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. State in

Interest of J.C., 2016-0138 (La. App. 1 Cir. 6/3/16), 196 So.3d 102, 106. These determinations should be evident from the language of the judgment without reference to other documents in the record. Laird, 836 So.2d at 366. In relevant part, a final appealable judgment must contain appropriate decretal language disposing of or dismissing claims in the case. State in Interest of J.C., 196 So.3d at 107.

The December 5, 2017 judgment granted the plaintiff's motion for summary judgment stating, in pertinent part:

**IT IS ORDERED, ADJUDGED AND DECREED** that the Motion for Summary Judgment filed on behalf of Beall & Thies, LLC is hereby GRANTED. Plaintiff is not obligated to pay the subject invoices.

**IT IS ORDERED, ADJUDGED AND DECREED** that Plaintiff has no damages. Plaintiff is not entitled to attorney's fees, costs, or civil penalties.

While the judgment contains decretal language, it does not identify the party against whom the ruling is ordered, it fails to identify what specific invoices the plaintiff is not obligated to pay, and it does not dismiss the defendant's peremptory exception raising the objection of no cause of action or in the alternative, a motion for summary judgment.<sup>2</sup> Furthermore, and more importantly, the judgment does not dismiss the plaintiff's case and leaves open the possibility that the parties may take further action in this case.

First, we note that the failure to name the defendant or defendants against whom the judgment is rendered in a case with multiple defendants makes the judgment fatally defective because one cannot discern from its face against whom it may be enforced. Conley v. Plantation Management Co., L.L.C., 2012-1510 (La.

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<sup>2</sup> We note that the trial court set for hearing, but failed to rule on the defendant's peremptory exception raising the objection of no cause of action or in the alternative, a motion for summary judgment that was based on the same grounds as the plaintiff's successful motion for summary judgment against the defendant.

App. 1 Cir. 5/6/13), 117 So.3d 542, 547, writ denied, 2013-1300 (La. 9/20/13), 123 So.3d 178. However, this court has found a judgment to be valid where, although it did not refer to the defendant by name, there was only one defendant involved in the case and the defendant's name was discernible from the caption of the judgment. See Id. Therefore, because there is only one defendant involved in the instant matter and its name is discernable from the caption of the judgment, this does not affect the finality of the December 5, 2017 judgment.

Secondly, we find that the December 5, 2017 judgment lacks the proper decretal language because in order to determine which "subject invoices" the judgment refers to, a reference to an extrinsic source or other document is required. Furthermore, the judgment is ambiguous because it appears to grant in part the defendant's motion for summary judgment, which was set for hearing and then passed without date. The judgment states "[p]laintiff has no damages. Plaintiff is not entitled to attorney's fees, costs, or civil penalties." However, the judgment does not dismiss the lawsuit or end the litigation.

Since the judgment grants the plaintiff's motion for summary judgment, but does not grant or dismiss the defendant's peremptory exception raising the objection of no cause of action or in the alternative, a motion for summary judgment, it is an interlocutory judgment because it did not dismiss the case or a party to the case. See La. C.C.P. art. 1915(A). A final judgment must dismiss a party or a case under La. C.C.P. art. 1915(A) or the judgment must grant particular relief and must be certified as final after an express determination that there is no just reason for delay under 1915(B) in order to be an appealable judgment. The judgment in this case does neither.

The proper procedural vehicle to contest an interlocutory judgment is an application for supervisory writ unless an appeal from such is expressly provided

by law. See La. C.C.P. arts. 2083 and 2201; Alex v. Rayne Concrete Service, 2005-1457 (La. 1/26/07), 951 So.2d 138, 144. We have authority to exercise our supervisory jurisdiction and treat the appeal of this interlocutory judgment as an application for supervisory writ. Stelluto v. Stelluto, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. An appellate court has broad discretion to convert an appeal to an application for supervisory review. Id. at 40. Therefore, we convert the plaintiff's appeal to an application for supervisory writs and next consider whether the application was timely filed.

An application for supervisory writs must be filed within thirty days of the notice of judgment. See Rule 4-3, Uniform Rules, Courts of Appeal. Although the trial court can extend that delay upon a proper showing, the request for an extension must be filed within the applicable thirty-day delay. See Maddie v. Vosburg, 2013-1791 (La. App. 1 Cir. 1/16/14), 146 So.3d 207; see also Barnard v. Barnard, 96-0859 (La. 6/24/96), 675 So.2d 734 (*per curiam*). An application not filed in the appellate court within the time so fixed or extended shall not be considered, in the absence of a showing that the delay in filing was not due to the applicant's fault. Rule 4-3, Uniform Rules, Courts of Appeal; Tower Credit, Inc., 194 So.3d at 65.

In the instant matter, notice of the trial court judgment was mailed to the parties on December 14, 2017, and the plaintiff filed its motion for appeal over thirty days later, on February 1, 2018. Thus, the motion for appeal, converted herein to an application for supervisory writs, was filed too late to invoke the supervisory jurisdiction of this court. See Rule 4-3, Uniform Rules, Courts of Appeal; Lake Villas No. II Homeowners' Association, Inc. v. LaMartina, 2015-0244, 2015 WL 9435193, at \*3 (La. App. 1 Cir. 12/23/15), writ denied, 2016-0149 (La. 3/14/16), 189 So.3d 1070. We further find no indication that the belated filing

was attributable to anything other than the fault of the plaintiff. While we recognize that the motion for appeal was filed within the appeal delay, this court has no appellate jurisdiction in this case, and the motion was filed too late to invoke our supervisory jurisdiction. Tower Credit, Inc., 194 So.3d at 65.

### **CONCLUSION**

For the foregoing reasons, this court does not have appellate jurisdiction in this case; and the appeal, having been converted herein to an application for supervisory writs, was not filed within the applicable delay to invoke our supervisory jurisdiction. Thus, the application for supervisory writs is not considered by this court. Costs of this appeal are assessed equally to plaintiff, Beall & Thies, LLC, and the defendant, Ciox Health, LLC.

**APPEAL CONVERTED TO APPLICATION FOR  
SUPERVISORY WRITS; APPLICATION NOT CONSIDERED.**