

PNC  
Mnt.  
JEW

**STATE OF LOUISIANA**  
**COURT OF APPEAL**  
**FIRST CIRCUIT**  
**2016 CA 1531**  
**MAXINE QUEYROUZE NICAUD**  
**VERSUS**  
**HARVEY JOSEPH NICAUD, JR.**

**Judgment Rendered: SEP 15 2017**

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On Appeal from the Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
No. 2012-14977

Honorable Allison H. Penzato, Judge Presiding

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Philip C. Ciaccio, Jr.  
Gretna, Louisiana

Counsel for Plaintiff/Appellee  
Charles Harold Cressy, Independent  
Testamentary Executor of the Succession of  
Maxine Queyrouze Nicaud

Richard A. Richardson  
Wesley J. Levesque  
Covington, Louisiana  
and  
Jesse L. Wimberly, III  
Jesee L. Wimberly, IV  
Mandeville, Louisiana

Counsel for Defendant/Appellant  
Harvey Joseph Nicaud, Jr.

\* \* \* \* \*

**BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.**

**McCLENDON, J.**

Maxine Queyrouze Nicaud, the holder of a promissory note, filed a "Petition on Note" on September 14, 2012, against Harvey Joseph Nicaud, Jr., her nephew and the maker of the note. After Ms. Nicaud filed a motion for summary judgment, the parties reached an agreement modifying the terms of the promissory note. On January 23, 2013, the trial court signed a consent judgment reflecting the modifications. Thereafter, on April 14, 2014, Ms. Nicaud filed a "Motion to Enforce Judgment." The parties entered into a second consent judgment, which was signed by the trial court on July 28, 2014, in which the motion to enforce the judgment was granted, Mr. Nicaud's default of the first consent judgment was acknowledged, and Mr. Nicaud was ordered to "immediately pay \$54,718.66" to Ms. Nicaud.

Attempts to collect on the debt were unsuccessful, and Ms. Nicaud died on September 19, 2015. On May 16, 2016, Mr. Nicaud filed a "Rule to Show Cause Why Judgment Should Not Be Declared Satisfied," in which he asserted that a provision in the promissory note deemed the indebtedness satisfied upon the death of either party to the note. The independent testamentary executor of the Succession of Maxine Queyrouze (the Succession) filed an opposition to the rule. On August 17, 2016, following a hearing, the trial court signed a judgment denying Mr. Nicaud's rule to show cause. Mr. Nicaud filed an appeal from that judgment. The Succession filed an answer to the appeal, seeking damages, attorney fees, and costs.

This Court, *ex proprio motu*, entered a Rule to Show Cause Order, requesting the parties to show cause by briefs why the appeal should or should not be dismissed as it appeared that the judgment was a non-appealable ruling. On February 23, 2017, a panel of this Court dismissed the appeal finding it to be an interlocutory judgment.

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. **Rush v. Rush**, 12-1502 (La.App. 1 Cir. 3/25/13), 115 So.3d 508, 510, writ denied, 13-0911 (La. 5/31/13), 118 So.3d 398. The appellate jurisdiction of this court extends to "final judgments." See LSA-C.C.P. arts. 1911, 1915, 2083. Under LSA-C.C.P. art. 2133, an answer to an appeal is in the character of a cross appeal in which the appellee takes advantage of an appeal entered

and perfected by an appellant, in the hope of procuring an alteration or amendment of the judgment rendered in a manner beneficial to the appellee. **J. Patrick, Inc. v. Patrick**, 13-2017 (La.App. 1 Cir. 7/9/15) (unpublished), writ denied, 15-1663 (La. 10/30/15), 180 So.3d 302 (citing **Francois v. Ybarzabal**, 483 So.2d 602, 606 (La. 1986)).

In this matter, another panel of the Court has dismissed this appeal for lack of jurisdiction. Because the answer to the appeal is based on the same interlocutory non-appealable ruling of the trial court, we lack jurisdiction over said answer. Accordingly, we dismiss the Succession's answer to the appeal. All costs of this appeal are assessed one-half to Harvey Joseph Nicaud, Jr. and one-half to the Succession of Maxine Joseph Nicaud.

**ANSWER TO APPEAL DISMISSED.**