NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 1760

AURORA LOAN SERVICES LLC

VERSUS

BARRY WADE GLASS

Judgment Rendered: DEC 06 2018

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 2011-14355

The Honorable Peter J. Garcia, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

PENZATO, J.

Defendant/Appellant, Barry Wade Glass, appeals the trial court's judgment granting a cross-motion for summary judgment in favor of Plaintiff/Appellee, Nationstar Mortgage, LLC (Nationstar), arising from an adjustable rate note and mortgage in connection with a loan. For the reasons that follow we dismiss the appeal for lack of subject matter jurisdiction as taken from a partial judgment that is not immediately appealable under the provisions of La. Code Civ. P. art. 1915.

FACTS AND PROCEDURAL HISTORY

On April 10, 2007, Glass executed a $225,000.00 adjustable rate note and paraphed mortgage note in favor of Lehman Brothers Bank, FSB (Lehman Brothers) to purchase immovable property located at 82356 Highway 1080, North Factory Road, Folsom, Louisiana. Lehman Brothers later endorsed the note to Lehman Brothers Holdings, Inc. (Lehman Brothers Holdings), which endorsed the note in blank.

On August 3, 2011, Aurora Loan Services, LLC (Aurora), as the then holder of the note, filed a petition for executory process to enforce the note and mortgage. Aurora later filed a supplemental and amending petition, attaching a true copy of the note, and requested that the proceeding be converted to ordinary process after Glass asserted that his signature on the note was a forgery. Glass filed an exception raising the objection of no right of action, claiming the note was not endorsed to Aurora. The trial court overruled the exception. Aurora subsequently assigned the mortgage to Nationstar, which substituted as party-plaintiff.

Thereafter, Glass filed a motion for summary judgment, claiming that the note submitted to the court was a forgery, and therefore, the note sold to Nationstar could not be enforced. Nationstar filed a cross-motion for summary judgment, claiming that Glass signed the note, received the loan, and purchased a home with the funds, and therefore, Glass's claim of forgery was unreasonable and legally

unenforceable. Both motions for summary judgment were heard by the trial court. Following the issuance of written reasons, the trial court signed a judgment on July 18, 2017, denying the motion for summary judgment on behalf of Glass and granting summary judgment on behalf of Nationstar. The judgment provides in pertinent part:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff's, Nationstar Mortgage, L.L.C., cross-motion for summary judgment is granted and there is judgment in favor of the plaintiff, Nationstar Mortgage, L.L.C., and against the defendant, Barry Wade Glass, for the full and true sum of TWO HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED THIRTY-FOUR AND 62/100 ($218,834.62) DOLLARS, together with contractual interest at the rate of 7.850% per annum from March 1, 2010 until paid, corporate advances in the amount of $411.00, escrow advances in the amount of $6,155.87, subject to a credit in the amount of $1,476.64 together with taxes, insurance and property preservation, which may be advanced in the future, reasonable attorney's fees and all costs of these proceedings.

Glass appealed, asserting that the trial court erred in granting summary judgment allowing Nationstar to enforce the note and the accessory mortgage securing the note, when there were genuine issues of material fact concerning whether Nationstar established that it was the holder of the note.

SUBJECT MATTER JURISDICTION

It is the duty of a court to examine subject matter jurisdiction *sua sponte,* even when the issue is not raised by the litigants. *Boudreaux v. State, Department of Transportation and Development*, 2001-1329 (La. 2/26/02), 815 So. 2d 7, 13 (per curiam). As an appellate court, we cannot determine the merits of an appeal unless our jurisdiction is properly invoked by a valid final judgment. *Phoenix Associates Land Syndicate, Inc. v. E.H. Mitchell & Co., L.L.C.*, 2007-0108 (La. App. 1 Cir. 9/14/07), 970 So. 2d 605, 610, *writ denied*, 2007-2365 (La. 2/1/08), 976 So. 2d 723. Louisiana Code of Civil Procedure article 1841 provides, in part, that a judgment that determines the merits in whole or in part is a final judgment. Our appellate jurisdiction extends to "final judgments." *See* La. C.C.P. art. 2083.

A valid 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 contain decretal language, and it 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. *See Carter v. Williamson Eye Center,* 2001-2016 (La. App. 1 Cir. 11/27/02), 837 So. 2d 43, 44. 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. Thus, a judgment that does not contain decretal language cannot be considered as a final judgment for the purpose of an immediate appeal, and this court lacks jurisdiction to review such a judgment. *See Johnson v. Mount Pilgrim Baptist Church*, 2005-0337 (La. App. 1 Cir. 3/24/06), 934 So. 2d 66, 67.

The judgment sought to be appealed herein, in part, was "subject to a credit in the amount of $1,476.64 **together with taxes, insurance and property preservation, which may be advanced in the future. ...**" (Emphasis added). Thus, the July 18, 2017 judgment contains a future contingency.[1] The specific nature and amount of damages should be determinable from a judgment without reference to an extrinsic source. *Vanderbrook v. Coachmen Industries, Inc.,* 2001-0809 (La. App. 1 Cir. 5/10/02), 818 So. 2d 906, 913. Because judgments are recorded in the mortgage records with no other documents, a third party should be

[1] We further note that the judgment awarded "reasonable attorney's fees." In *In re Interdiction of Metzler*, 2015-0982 (La. App. 1 Cir. 2/22/16), 189 So. 3d 467, 469, this court found that there was no final, appealable judgment, because "[t]he exact amount of attorney fees cannot be determined from the judgment," and therefore, this court lacked subject matter jurisdiction. *See also Perkins v. BBRC Investments, LLC*, 2014-0298 (La. App. 1 Cir. 10/17/14), 205 So. 3d 930, 933 (A judgment, in part, awarded attorneys' fees as a percentage of the damage award, which amount was awarded in a separate judgment. As a result, this court found that the amount was determinable only by reference to an extrinsic source, rendering the judgment ambiguous and lacking in appropriate decretal language. Therefore, the judgment could not be considered final); and *Andrew Paul Gerber Testamentary Trust v. Flettrich*, 2016-0065 (La. App. 4 Cir. 11/2/16), 204 So. 3d 634, 638 ("Although the . . . Judgment grants [defendant's] request for attorney's fees, it does not quantify the amount of attorney's fees to be awarded to [defendant]. The Judgment, therefore, does not dispose of all the issues between the parties, and is not a final appealable judgment.")

able to determine from the judgment the amount owed without reference to other documents. *See Vanderbrook*, 818 So. 2d at 913-14. This court dismissed an appeal when the judgment at issue awarded damages in a specific amount, subject to a "credit for any restitution ... previously paid ... in connection with [the] matter." *Martinez v. Wilson*, 2017-0922 (La. App. 1 Cir. 4/3/18), 248 So. 3d 406, 409. The amount of the credit was not apparent from a reading of the judgment and required reference to extrinsic sources. Therefore, the amount of damages was not stated with certainty and precision, and the judgment was not a valid, final judgment. As such, this court lacked jurisdiction to consider the merits of the appeal. *Martinez*, 248 So. 2d at 409.

This court has consistently held that "a final appealable judgment must contain appropriate decretal language disposing of or dismissing claims in the case." *See e.g. State by and through Caldwell v. Teva Pharmaceuticals Industries, Ltd.*, 2017-0448 (La. App. 1 Cir. 2/8/18), 242 So. 3d 597, 602, *citing State in Interest of J.C.*, 2016-0138 (La. App. 1 Cir. 6/3/16), 196 So. 3d 102, 107. Accordingly, because the judgment before us does not award a certain and definite amount of damages, but instead awards a sum to which must be added the costs of additional expenses that are yet to be calculated or that must be determined from extrinsic sources, we find the judgment is not a valid final judgment over which we may exercise our appellate jurisdiction. *See Rosewood Enterprises, Inc. v. Rosewood Development, LLC*, 2016-0352 (La. App. 1 Cir. 3/6/17), 2017 WL 900041, at *5-6 (unpublished) (This court dismissed the appeal for lack of jurisdiction after finding the judgment was "fatally defective" because the amount of recovery was not stated with certainty and precision and that no specific amount or percentage of attorneys' fees was identified).

Although this court could consider converting this matter to an application for supervisory writs, we decline to do so. The record reflects that Glass did not

file his notice of appeal in time for this action to be converted to an application for supervisory writs. The judgment at issue was signed on July 18, 2017, and the notice of signing of the judgment was sent on July 19, 2017. Glass's Motion and Order for Devolutive Appeal was filed on September 11, 2017, and the trial court order granting this appeal was signed on the September 13, 2017. Pursuant to Uniform Rules—Courts of Appeal, Rule 4–3, which sets forth the filing requirements of supervisory writ applications, "[t]he return date in civil cases shall not exceed 30 days from the date of notice as provided in La. C.C.P. art. 1914." *See Spanish Lake Restoration, L.L.C. v. Shell Oil Company.*, 2015-0837 (La. App. 1 Cir. 4/18/16), 2016 WL 1572425 at *5 (unpublished). Here, since Glass did not file his notice of appeal until more than thirty days after the notice of signing of the judgment, we decline to convert the appeal to an application for supervisory writs. *See Wooley v. Amcare Health Plans of Louisiana, Inc.,* 2005-2025 (La. App. 1 Cir. 10/25/06), 944 So. 2d 668, 674 n.4; *see also Stelluto v. Stelluto,* 2005-0074 (La. 6/29/05), 914 So. 2d 34, 39 (noting that the decision to convert an appeal to an application for supervisory writs is within the discretion of the appellate courts).

CONCLUSION

For the above and foregoing reasons, we find that the instant appeal taken by Barry Wade Glass is improper, as taken from a judgment that is not final or otherwise subject to immediate appeal. Therefore, this appeal is dismissed, *ex proprio motu*, for lack of appellate jurisdiction, and the matter is remanded to the trial court for further proceedings consistent with this opinion. All costs of this appeal are assessed against and defendant/appellant, Barry Wade Glass.

APPEAL DISMISSED.