

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2020 CA 0552

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-3

VERSUS

JOHN T. WATSON

Judgment Rendered: DEC 10 2020

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Docket Number 2018-13761

Honorable Reginald Badeaux, III, Judge Presiding

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National Collegiate Student Loan Trust
2006-3

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John T. Watson
Mandeville, LA

Defendant/Appellee,
In Proper Person

BEFORE: WHIPPLE, C.J., WELCH, AND CHUTZ, JJ.

WHIPPLE, C.J.

In this appeal, plaintiff challenges the trial court's judgment, granting defendant's exception of no right of action and dismissing its suit with prejudice. For the reasons that follow, we grant plaintiff's motion to dismiss the appeal and recall our show cause order.

FACTS AND PROCEDURAL HISTORY

On August 3, 2018, plaintiff, National Collegiate Student Loan Trust 2006-3, filed suit against defendant, John T. Watson, to collect an outstanding sum allegedly due on a student loan. Defendant filed an answer in which he specifically pled various exceptions, including a dilatory exception of lack of procedural capacity and peremptory exceptions of no right of action, no cause of action, and prescription. Following a hearing on the exceptions, the trial court signed a judgment dated August 12, 2019, granting defendant's exception of no right of action and dismissing plaintiff's suit with prejudice.

Plaintiff filed a motion for new trial, which, following a hearing on the motion, was denied by judgment dated November 6, 2019.¹ Notice of the trial court's judgment denying plaintiff's motion for new trial was mailed to counsel of record on November 20, 2019.

Plaintiff thereafter sought to devolatively appeal the trial court's August 12, 2019 judgment, and the trial court later signed an order of devolutive appeal on March 4, 2020. After the appeal was docketed, the matter was scheduled for oral argument in this court on November 4, 2020, but was continued due to an outstanding show cause order and briefing schedule. Prior to the expiration of that briefing schedule, plaintiff filed a motion to dismiss the appeal.

¹Plaintiff actually filed its motion for new trial on July 3, 2019, before the trial court's judgment was signed on August 12, 2019. However, the technical prematurity of the motion for new trial was cured upon the trial court's signing of the August 12, 2019 judgment. Succession of Simms, 2019-0936 (La. App. 1st Cir. 2/21/20), 297 So. 3d 110. 113 n.3.

DISCUSSION

Where there has been no timely answer to the appeal or other formal action to amend or modify the judgment on appeal, the appellant may, by *ex parte* motion, have the appeal dismissed with leave of court. Uniform Rules—Courts of Appeal, Rule 2-8.4. In the instant appeal, defendant has not answered the appeal or sought to amend or modify the judgment on appeal. Accordingly, we grant plaintiff's motion to dismiss appeal. See Heine v. City/Parish of East Baton Rouge, 2001-1927 (La. App. 1st Cir. 9/27/02), 835 So. 2d 558, 559-560.

CONCLUSION

For the above and foregoing reasons, the show cause order issued in this case is hereby recalled, the plaintiff's motion to dismiss the appeal is granted, and the plaintiff's appeal of the August 12, 2019 judgment is dismissed. Costs of this appeal are assessed against National Collegiate Student Loan Trust 2006-3.

APPEAL DISMISSED.