

DEROME A. SEALS

*

NO. 2017-CA-0154

VERSUS

*

COURT OF APPEAL

**ASI FEDERAL CREDIT
UNION**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-11705, DIVISION "A"
Honorable Tiffany G. Chase, Judge

* * * * *

Judge Terrel J. Broussard, Pro Tempore

* * * * *

(Court composed of Judge Terri F. Love, Judge Marion F. Edwards, Pro Tempore,
Judge Terrel J. Broussard, Pro Tempore)

Derome A. Seals
1527 Gallier Street
New Orleans, LA 70117

PLAINTIFF-APPELLANT IN PROPER PESON

AFFIRMED

OCTOBER 11, 2017

The plaintiff/appellant, Derome Seals, seeks this Court's review and reversal of the November 10, 2016 judgment granting the motion for judgment on the pleadings in favor of the defendant/appellee, ASI Federal Credit Union. For the reasons set forth below, we affirm.

Statement of the Case

On December 10, 2015, the appellant filed a petition for damages in Civil District Court for the Parish of Orleans. On January 15, 2016, he motioned the trial court for a preliminary default judgment. The appellee answered the petition on January 21, 2016, and on February 10, 2016, the appellant filed a motion and order for summary judgment with a corresponding memorandum. On March 17, 2016, the appellee filed a motion for judgment on the pleadings. On March 22, 2016, the appellee also filed a response to the appellant's motion for summary judgment. The appellant then filed an opposition to the "defendant's" motion for summary judgment on March 30, 2016¹. He also filed a request for production of documents.

¹ It appears from the record that the appellant labeled the pleading incorrectly. The only pleading that is the subject of this appeal is the judgment on the pleadings. The record does not reflect that the appellee filed a motion for summary judgment that warranted an opposition.

On May 13, 2016, the trial court held a hearing on the appellant's motion for summary judgment, and in a judgment reduced to writing dated June 3, 2016, the trial court denied the appellant's motion for summary judgment². Thereafter, the trial court set a rule to show cause why the appellee's motion for judgment on the pleadings should not be granted. The motion for judgment on the pleadings was heard on September 2, 2016, and memorialized in a written judgment dated November 10, 2016, granting the appellee's motion for judgment on the pleadings and dismissing the appellant's action with prejudice.

The November 10, 2016 judgment is the subject of the instant appeal.

In this Court, the appellant filed a motion for appeal on November 15, 2016, and the trial court granted the motion setting the return date within the delays allowed by law.

Facts

According to the appellant, he and his son Jessie Wright opened a savings account with the appellee in April of 2014, and the appellant was named as an authorized user on the account. In June of 2015, the savings account became overdrawn when Legal Shield (a non-party herein) attempted to debit monies from a linked account³.

In November 2015, Wal-Mart declined the appellant's check written on his Fidelity Bank account. Wal-Mart advised the appellant to contact Telecheck. Telecheck informed the appellant that the appellee had reported him indebted to the appellee for the sum of \$85.85.

² The appellant references the denial of his motion for summary judgment in his brief, however, that is a moot issue considering he failed to seek an appeal as to that specific judgment.

The appellant disputed the matter with Telecheck, the appellee, the Better Business Bureau, and the National Credit Union Administration.

On December 13, 2015, in a letter to the appellant, Telecheck found that the amount in dispute was “wholly Inaccurate or Unverifiable.” The appellant maintains that he was penalized, and his son, the joint holder of the account, was not.

The appellant alleges in his petition for damages that he suffered, “aggravated pre-existing illness, easily [sic] agitation, insomnia, embarrassment, humiliation, suspended check writing privileges, and negative credit reporting”. He seeks \$25.00 in actual damages and \$25,000,000.00 in punitive damages.

Standard of Review, Jurisdiction and Analysis

First we review the November 10, 2016 judgment of the trial court.⁴

The judgment in this case, on its face, presents a jurisdictional deficiency by the failure of the judgment to name the party against whom the judgment is granted. Appellate courts have the duty to determine *sua sponte* whether subject matter jurisdiction exists. *West Jefferson Med. Ctr. Staff ex rel. Boraski v. State*, 09–1365, p. 2 (La.2/26/10), 28 So.3d 257, 258; *Boudreaux v. State, Dept. of Transp. and Dev.*, 01–1329, p. 8 (La.2/26/02), 815 So.2d 7, 13. This court cannot reach the merits of an appeal unless our appellate court jurisdiction has been properly invoked by a valid final judgment. *Bd. of Supervisors of La. State Univ. and Agric. and Mech. College v. Mid City Holdings, L.L.C.*, 14–0506, p. 2 (La.

³ One of the appellant’s main arguments is that the savings account, which he shared jointly with his son, is wholly different from the linked checking account that Legal Shield attempted to debit. This argument is without merit.

⁴ The record reveals that the trial court used the terms “motion for judgment on the pleadings” and “motion for summary judgment” interchangeably at the September 2, 2016, hearing. However, it is clear from the judgment reduced to writing on November 10, 2016 that the trial court ruled on the appellee’s motion for judgment on the pleadings.

App. 4 Cir. 10/15/14), 151 So.3d 908, 910; *Input/Output Marine Sys., Inc. v. Wilson Greatbatch, Tech., Inc.*, 10–477, p. 12 (La. App. 5 Cir. 10/29/10), 52 So.3d 909, 915.

Further, “[a] judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled.” La. C.C.P. art. 1841. This judgment determined the rights of the parties. A final judgment is one that determines the merits in whole or in part and is identified as such by appropriate language. La. C.C.P. arts. 1841, 1918. This judgment did determine the merits of the case. This circuit has held that: “[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.” *Mid City Holdings*, 14–0506, pp. 2–3 (La. App. 4 Cir. 10/15/14), 151 So.3d 908, 910, quoting *Palumbo v. Shapiro*, 11–0769, p. 5 (La. App. 4 Cir. 12/14/11), 81 So.3d 923, 927. Additionally, “The result decreed must be spelled out in lucid, unmistakable language. The quality of definiteness is essential to a proper judgment.” *Input/Output Marine Sys., Inc.*, 10–477, p. 13, 52 So.3d at 916. “The specific relief granted should be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment.” *Id.*; see also *Morgan v. Pardue*, 15–149, p. 4 (La. App. 3 Cir. 10/7/15), 175 So.3d 1053, 1056; *Gaten v. Tangipahoa Parish Sch. Sys.*, 11–1133, p. 3 (La. App. 1 Cir. 3/23/12), 91 So.3d 1073, 1074; *Tsegaye v. City of New Orleans*, 15–0676, p.3 (La. App. 4 Cir 12/18/15), 183 So.3d 705,710. *Moon v. City of New Orleans*, 15-1092, 15-1093, p.5 (La. App. 4 Cir. 3/16/16), 190 So.3d 422, 425.

The judgment in this case does not state the party against whom the judgment is rendered. The jurisdictional flaw, in this case, is not fatal as its deficient and ambiguous language was cured by the definite dismissal of the entire action with prejudice. Therefore, the specific relief granted by the trial court can be determined from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment. Accordingly, the court will consider the merits of the case. *Urquhart v. Spencer*, 15-1354, p.3 (La. App. 4 Cir. 12/1/16), 204 So.3d 1074, 1077 (citing) *Moon*, 15–1092, 15–1093, p. 5-6, 190 So.3d at 425; *See Delahoussaye v. Tulane Univ. Hosp. & Clinic*, 12-0906, pp.4-5 (La. App. 4 Cir. 2/20/13), 155 So.3d 560, 562–63; *Tomlinson v. Landmark Am. Ins. Co.*, 15-0276, p.2 (La. App. 4 Cir. 3/23/16), 192 So. 3d 153, 156.

The issue before the court is whether the trial court erred in granting the appellee’s motion for judgment on the pleadings. La. C.C. P. art. 965 states:

Any party may move for judgment on the pleadings after the answer is filed, or if an incidental demand has been instituted after the answer thereto has been filed, but within such time as not to delay the trial. For the purposes of this motion, all allegations of fact in mover's pleadings not denied by the adverse party or by effect of law, and all allegations of fact in the adverse party's pleadings shall be considered true.

In *Duplessie v. Sec. Iron Co.*, unpub., 13-1508, 2014 WL 1775562, p.1, (La. App. 4 Cir. 4/30/14), this Court ruled that an appeal from the trial court’s denial of a motion on the pleadings/summary judgment warranted our *de novo* review of the record.

Here we must determine whether there is sufficient information in the pleadings in the record that was available for consideration by the trial court that warranted a judgment on the pleadings in favor of the appellee.

A motion for judgment on the pleadings differs from a motion for summary judgment in that on the latter there may be submitted supporting affidavits and counter affidavits and depositions. LSA–C.C.P. art. 966. A motion for judgment on the pleadings is submitted on the pleadings which may include attached exhibits made a part of the pleadings. In either case the judgment may be granted as a matter of legal right if there does not appear to be a genuine issue of material fact. Our jurisprudential guidelines favor giving a party his day in court, hence summary judgments and judgments on the pleadings are granted only when the legal right is clearly established. (Citations omitted).

I.F. v. Administrators of Tulane Educ. Fund, 11-0308, p.7-8 (La. App. 4 Cir. 8/24/11), 72 So. 3d 462, 467. (internal citations omitted)

The record reveals that the appellant, in his petition for damages, alleges facts as it relates to his claim, seeks actual damages in the sum of \$25.00 and punitive damages in the sum of \$25,000,000. The appellant offers no legal basis for his claims. Simply put, “[f]or a plaintiff to recover damages, he must first prove his case...” See *Burse v. Allstate Ins.*, 00-1895, p. 3 (La. App. 5 Cir. 3/28/01), 783 So.2d 548, 551. “Following this principle, a plaintiff also bears the burden of proving each and every element of damage claimed.” *Caruso v. Chalmette Ref., LLC*, 16-1117, p.9 (La. App. 4 Cir. 6/28/17), 222 So. 3d 859, 865 (citing) *Perez v. State Through Dep't of Transp. & Dev.*, 578 So.2d 1199, 1206 (La. App. 4th Cir. 1991).

In its answer and affirmative defenses, the appellee admits that the appellant held a joint bank account with Jessie Wright that became overdrawn and was reported to Telecheck by the appellee. The appellee also asserts in its answer and affirmative defenses that the appellant failed to mitigate his damage in his petition.

“In considering a motion for judgment on the pleadings, nothing beyond the pleadings may be considered; supporting evidence may not be considered. *Gibbens*

v. Wendy's Foods, Inc., 31,487, pp. 3–4 (La. App. 2 Cir. 1/20/99), 729 So.2d 629, 631–632, (citing, *inter alia*, *Thomas v. Allstate Ins. Co.*, 367 So.2d 1300, 1301 (La. App. 4th Cir.1979)). A motion for judgment on the pleadings neither requires nor permits supporting affidavits, and on such a motion a trial court is not at liberty to consider any matter not within the pleadings. *Hygrade Inv., Inc. v. Leonard*, 197 So.2d 702, 704 (La. App. 4 Cir. 1967).” *Daigre v. Int'l Truck & Engine Corp.*, 10-1379, p. 5 (La. App. 4 Cir. 5/5/11), 67 So. 3d 504, 508.

At the hearing on the appellee’s motion, the trial court reiterated that all of the allegations in the appellee’s pleadings that were not denied by the appellant are to be considered true. The trial court also recognized that the appellant could not prevail in light of 15 U.S.C. § 1692 because the statute applies to debt collectors, and the credit union is excluded under the clear pronouncements of that statute⁵ because the credit union was attempting to collect a debt owed to it as opposed to a debt for another entity. The Appellant’s petition failed to state a cause of action that would merit relief and an award of damages.

Conclusion

The appellant seeks a claim pursuant to 15 U.S.C § 1692 but fails to demonstrate that he has a viable claim. The statute is applicable to debt collectors. The clear pronouncements of the statute are not intended to include the collecting

⁵ 15 U.S.C. 1692 states in pertinent part:

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

of debts by credit unions. Further, the appellee properly moved for a judgment on the pleadings after it filed its answer, the appellant failed to oppose the appellee's motion. Therefore all allegations of fact in the appellee's pleadings not denied by the appellant are considered true. *See* La. C.C.P. art. 965.

A *de novo* review reveals that the trial court properly granted the appellee's motion from the four corners of the Appellant's petition. The trial court did not err in granting the appellee's motion for judgment on the pleadings.

Decree

For the reasons stated above, we affirm the judgment of the trial court granting the motion for judgment on the pleadings.

AFFRIMED