

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

CA 15-839

JOHN J. CUMMINGS, III

VERSUS

CAPITOL PROPERTIES, LLC

**APPEAL FROM THE
ELEVENTH JUDICIAL DISTRICT COURT
PARISH OF SABINE, NO. 33675
HONORABLE STEPHEN B. BEASLEY, DISTRICT JUDGE**

D. KENT SAVOIE

JUDGE

Court composed of Judges John D. Saunders, Marc T. Amy, and D. Kent Savoie.

MOTION TO DISMISS APPEAL GRANTED.

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SAVOIE, Judge.

The defendant-appellant, Capitol Properties, Inc. (Capitol), moves to dismiss its own appeal following this court's issuance of a rule to show cause why the appeal should not be dismissed. For the following reasons, the motion to dismiss the appeal is granted.

On May 18, 2015, the trial court signed a judgment that granted the exception of no cause of action filed by the plaintiff, John J. Cummings, III (Cummings). The judgment granted Capitol an opportunity to amend its pleadings to properly state a cause of action for fraud. Without first amending its pleadings, Capitol sought an ex parte order certifying that the May 18 judgment was a final judgment. On July 15, 2015, that order was signed by the trial court, and Capitol appealed.

This court issued a rule to show cause why the appeal should not be dismissed as having been taken from an interlocutory judgment that is not subject to being designated as final pursuant to La.Code Civ.P. art. 1915. *See* La.Code Civ. P. arts. 934 and 2162; and *Charles v. Jeff Davis Met-La Head Start*, 525 So.2d 1277 (La.App. 3 Cir. 1988).

Following this issuance of this rule, Capitol filed a motion to dismiss its own appeal, recognizing that the May 18, 2015 judgment was an interlocutory judgment not subject to certification as final. Therefore, the motion to dismiss the appeal is granted.

MOTION TO DISMISS APPEAL GRANTED.

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3 Uniform Rules, Court of Appeal.