

NOT DESIGNATED FOR PUBLICATION

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

CA 20-254

MACRO COMPANIES, INC.

VERSUS

DEARYBURY OIL & GAS, INC., ET AL.

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. C-20184283
HONORABLE JULES DAVIS EDWARDS, DISTRICT JUDGE**

BILLY H. EZELL

JUDGE

Court composed of Billy H. Ezell, Shannon J. Gremillion, and Phyllis M. Keaty,
Judges.

**APPEAL SUSPENDED;
REMANDED WITH INSTRUCTIONS.**

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EZELL, Judge.

This court issued a rule ordering Defendant-Appellant, Florida Marine Transporters, LLC (FMT), to show cause, by brief only, why the appeal as to the July 29, 2019 judgment should not be dismissed as untimely and as having been taken from a judgment lacking proper decretal language. *See* La.Code Civ.P. art. 2087; *Input/Output Marine Sys., Inc. v. Wilson Greatbatch, Techs., Inc.*, 10-477 (La.App. 5 Cir. 10/29/10), 52 So.3d 909. For the reasons that follow, we suspend the appeal and remand this matter to the trial court with instructions to issue a judgment containing proper decretal language.

FACTS AND PROCEDURAL HISTORY

The instant case arises from events following the September 20, 2017 landfall of Hurricane Maria on Puerto Rico. The storm left the area in desperate need of fuel for emergency response. Federal Emergency Management Agency (FEMA) contacted Plaintiff, Macro Companies, Inc. (Macro), to supply five million gallons of fuel. Macro subsequently arranged for the sale of the fuel directly from Defendant, Dearybury Oil and Gas, Inc., to FEMA via a broker, Kenneth Pullen (Pullen) of FMT. Macro was to receive a five cent per gallon commission on the fuel sold to FEMA. After the completion of the sale, Macro was not paid the commission, leading to the instant litigation.

At issue herein is a Motion for Summary Judgment filed by Macro, seeking the dismissal of a reconventional demand filed by FMT. Following a hearing, a written Judgment on Rules was signed on July 29, 2019, which provided, in pertinent part, as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment be and is hereby granted as to allegations occurring prior to the alleged midday phone call between Pullen and McElligott on the 30th day of September 2017. The motion for summary judgment is denied as to allegations occurring thereafter.

Costs associated with these proceedings are split equally between the parties.

On February 7, 2020, Defendant-Appellant filed a motion for devolutive appeal of that judgment along with a judgment dated November 25, 2019. When the record was received by this court, we discovered that the July 29, 2019 judgment did not contain decretal language dismissing any part of FMT's claim. Therefore, we ordered FMT to show cause why the appeal should not be dismissed as having been taken from a judgment lacking proper decretal language. FMT responded to the rule to show cause, arguing that the judgment contains the requisite decretal language. We disagree.

In the instant case, the judgment contains no decretal language dismissing any of FMT's claims. Consequently, this court finds that it lacks jurisdiction to consider the merits of the appeal. Accordingly, we suspend the appeal and remand this matter to the trial court for the limited purpose of rendering a proper final judgment as we did in *Mouton v. AAA Cooper Transp.*, 17-666, 17-667 (La.App. 3 Cir. 1/10/18), 237 So.3d 594.

Regarding timeliness, we find that the July 29, 2019 ruling, a partial summary judgment, was interlocutory and not designated as a final judgment after an express determination that there is no just reason for delay. La.Code Civ.P. art 1915(B). FMT asserts that the suit has now been finally adjudicated by virtue of the judgment rendered by the trial court on November 25, 2019, which finally dismissed with prejudice all claims by all parties. Accordingly, we find that the July 29, 2019 judgment is now appealable upon the unrestrictive appeal of the entire matter; thus, we withdraw the rule as to timeliness.

DECREE

For the reasons given, this court lacks jurisdiction to consider the merits of this appeal because it was taken from a judgment that lacks proper decretal language. This appeal is suspended, and the matter is remanded to the trial court with instructions to sign a judgment containing proper decretal language no later than September 4, 2020. The Clerk of Court for the Fifteenth Judicial District Court shall forward the judgment so signed to this court as a supplement to the appellate record, in duplicate.

APPEAL SUSPENDED; REMANDED WITH INSTRUCTIONS.

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