

**WELLS ONE INVESTMENTS,
LLC**

*

NO. 2017-CA-0415

VERSUS

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COURT OF APPEAL

THE CITY OF NEW ORLEANS

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

CONSOLIDATED WITH:

CONSOLIDATED WITH:

THE CITY OF NEW ORLEANS

NO. 2017-CA-0416

VERSUS

WELLS ONE INVESTMENT

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-00836 C\W 2017-00894, DIVISION "A"
Honorable Tiffany G. Chase, Judge

* * * * *

Judge Terrel J. Broussard, Pro Tempore

* * * * *

(Court composed of Judge Daniel L. Dysart, Judge Regina Bartholomew Woods,
Judge Terrel J. Broussard, Pro Tempore)

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APPEAL DISMISSED WITHOUT PREJUDICE; REMANDED

NOVEMBER 02, 2017

Appellee, Wells One Investment, LLC, filed in the district court a petition seeking a preliminary injunction against Appellant, the City of New Orleans. A hearing on the matter was held, and the district court ruled in favor of Appellee.¹ From this judgment, Appellant appeals.²

A review of the Judgment of the district court reveals it is not a valid, final, appealable judgment. Any judgment granting either a preliminary or a final injunction or a temporary restraining order must describe, in reasonable detail, and not by mere reference to the petition, or other documents, the act or acts sought to be restrained. This Court declines to exercise its supervisory jurisdiction to review the Judgment. Accordingly, we dismiss the appeal, without prejudice, and remand the matter to the district court so that a valid final judgment may be rendered and signed according to law.

¹Louisiana Code of Civil Procedure article 3609 provides when a court may issue a preliminary injunction without taking evidence and states:

The court may hear an application for a preliminary injunction or for the dissolution or modification of a temporary restraining order or a preliminary injunction upon the verified pleadings or supporting affidavits, or may take proof as in ordinary cases. If the application is to be heard upon affidavits, the court shall so order in writing, and a copy of the order shall be served upon the defendant at the time the notice of hearing is served.

²Appellate sought and was granted a suspensive appeal which suspended the effect of the February 10, 2017 judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2016, Appellee made an offer to purchase a triplex bearing municipal address 2739-41-41A Bruxelles Street, and the offer was accepted. On November 9, 2016, Appellant, through the Department of Safety and Permits, issued a building permit #16-37197-RNVN to Prestige Facility Maintenance Service, LLC, Appellee's general contractor. This permit authorized Appellee to renovate the existing triplex located at 2739-41-41A Bruxelles Street. On January 5, 2017, an act of cash sale was completed. In connection with the sale, Appellee entered into a mortgage on the property. On January 6, 2017, Appellee began renovation work in accordance with the building permit. However, on January 12, 2017, an employee of Appellant issued to Appellee a Stop Work Order on the grounds Appellee failed to obtain a dumpster permit and the basement did not meet FEMA requirements. Subsequently, Appellee was advised the property was not zoned for a three-family dwelling, and Appellant rescinded the permit.

On January 27, 2017, Appellee filed in the district court a "Verified Petition for Temporary Restraining Order, Preliminary Injunction and Incorporated Memorandum in Support." In the petition, Appellee prayed for relief in the form of a temporary restraining order, and if it prevailed on the preliminary injunction, Appellee prayed:

(1) The City of New Orleans through the Department of Safety and Permits must accept payment of the dumpster permit fee from plaintiff and withdraw the subject Stop Work Order for the property located at 2739-41-41A Bruxelles Street; and

(2) The City of New Orleans through the Department of Safety and Permits must reissue and/or re-activate building permit #16-37197-RNVN allowing the plaintiff to continue to refurbish the property located at 2739-41-41A Bruxelles Street and permit that renovation to continue as a triplex.

On February 2, 2017, a rule to show cause hearing on Appellee's application for preliminary injunction was held. At the hearing, the specific relief to be granted for the preliminary injunction was not discussed. The district court granted Appellee's petition for a preliminary injunction. Following, Appellant requested reasons for judgment, and the district court issued reasons. On February 10, 2017, the district court signed the Judgment which provided in pertinent part:

On February 2, 2017, a Rule to Show Cause on the application for for [sic] Preliminary Injunction filed on behalf of Wells One Investments, LLC came for hearing before the Honorable Tiffany Chase.

* * *

Considering the pleadings, memoranda, affidavits and oral argument of parties, the application for for [sic] Preliminary Injunction filed on behalf of Wells One Investments, LLC be and is hereby granted. Security in the amount of five hundred dollars and no cents (\$500.00) must be furnished by Wells One Investments, LLC.

JURISDICTIONAL ISSUE

The foundation of an appeal is subject matter jurisdiction. Appellate courts have the duty to determine, *sua sponte*, before reaching the merits of an appeal, whether subject matter jurisdiction exists, even when the parties do not raise the issue.³ The jurisprudence requires a final valid judgment to be precise, definite, and certain.⁴ Another requirement by the jurisprudence for a final valid judgment is the judgment must contain decretal language, which is the portion of the court's judgment or order that officially states or decrees what the court is ordering.⁵ Only

³*Urquhart v. Spencer*, 15-1354, p. 3 (La.App. 4 Cir. 12/1/16), 204 So.3d 1074, 1077 (quoting *Moon v. City of New Orleans*, 15-1092, 15-1093, p. 5 (La.App. 4 Cir. 3/16/16), 190 So.3d 422, 425).

⁴*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.

⁵*Freeman v. Phillips 66 Co.*, 16-247, p. 2 (La.App. 4 Cir. 12/21/16), 208 So.3d 437, 440 (quoting *Jones v. Stewart*, 16-329, p. 5 (La.App. 4 Cir. 10/5/16), 203 So.3d 384, 387).

the decree dictates the decision, and it must be spelled out in lucid, unmistakable language. The specific relief granted must be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment.⁶ For the language of the judgment to be considered decretal it must (1) name the party in favor of whom the ruling is ordered, (2) name the party against whom the ruling is ordered, and (3) state the relief that is granted or denied.⁷

In this case, the Judgment fails to state the name of the party against whom the judgment is ordered. Additionally, the Judgment merely grants the preliminary injunction. Louisiana Code Civil Procedure Article 3605 provides, “An order granting either a preliminary or a final injunction or a temporary restraining order **shall describe in reasonable detail, and not by mere reference to the petition or other documents, the act or acts sought to be restrained.**” (emphasis added). The Judgment, in this case, lacks the detailed language of the act or acts sought to be restrained and/or enjoined. In *Miller v. Knorr*, 553 So.2d 1043, 1046 (La.App. 4 Cir. 1989), this Court found appellant’s assigned error, that the judgment granting a preliminary injunction lacked specificity as required by art. 3605, had merit.⁸

⁶*Input/Output Marine Sys., Inc.*, 52 So.3d at 916.

⁷*Tsegaye v. City of New Orleans*, 15-0676, p. 3 (La.App. 4 Cir. 12/18/15), 183 So.3d 705, 710, writ denied, 16-0119 (La. 3/4/16), 188 So.3d 1064 (quoting *Board of Supervisors of La. State Univ. and Agric. And Mech. Coll. v. Mid City Holdings, L.L.C.*, 14-0506, p. 2 (La.App. 4 Cir. 10/15/14), 151 So.3d 908, 910).

⁸The judgment provided:

IT IS ORDERED, ADJUDGED AND DECREED that a preliminary injunction issue herein and accordingly let there be judgment herein in favor of Harold Miller and the City of New Orleans, and against John Knorr, Jr., declaring the premises situated at 4220–22–24 Dumaine Street to be in contravention of the Comprehensive Zoning Ordinance of the City of New Orleans, in that the structure is currently being used as a 5–family dwelling when it possesses only a legally non-conforming 3–family dwelling status.

Miller, 553 So.2d at 1046.

This Court explained the judgment lacked the detailed description of the act or acts sought to be restrained, and there was no language in the judgment which purported to describe any act to be enjoined. *Miller*, 553 So.2d at 1046.⁹ Additionally, in *Moon v. City of New Orleans*, 15–1092, 15–1093, p. 5 (La.App. 4 Cir. 3/16/16), 190 So.3d 422, 426, the trial court’s judgment failed to specify the matters ruled upon and the specific relief granted. The plaintiffs in *Moon* sought review of the granting of the defendants’ peremptory exceptions of no right of action, nonjoinder of a party, and no cause of action. Following a hearing on the defendants’ exceptions, the trial court signed a judgment stating “the exceptions filed by the City [defendants] in the above captioned matter are hereby GRANTED.” *Moon*, 190 So.3d at 425. This Court held that the judgment lacked decretal language specifying the matters ruled upon and the specific relief granted. It dismissed the appeal, and remanded the matter to the trial court for further proceedings. *Moon*, 190 So.3d at 426.

CONCLUSION

In this case, the Judgment fails to name the party whom the judgment is against, and it fails to set forth a description of the act or acts sought to be restrained or to be enjoined. In the absence of this necessary language, we find the February 10, 2017 Judgment cannot be considered a valid final appealable judgment, and this Court lacks jurisdiction to consider the merits of the appeal. Consequently, we dismiss the appeal without prejudice, and remand the matter to the district court for further proceedings.

⁹In *Miller*, 553 So.2d at 1046, the court chose to amend the judgment. However, in this case, amendment of the Judgment would not be judicially prudent as the transcript of the hearing, the written reasons for judgment, and the Judgment do not reflect the specific injunctive relief granted.

DECREE

For the reasons set forth above, the appeal filed by Appellant, the City of New Orleans, is dismissed without prejudice, and the matter is remanded to the district court.

APPEAL DISMISSED WITHOUT PREJUDICE; REMANDED