NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1461

BERNHARD MECHANICAL CONTRACTORS, INC.

VERSUS

JOSEPH THOMAS SPINOSA

Judgment Rendered: February 11, 2011

* * * * * * *

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 588,427

Honorable R. Michael Caldwell, Judge Presiding

* * * * * * * * * *

Craig L. Kaster
Zachary, LA

Counsel for Plaintiff/Appellee
Bernhard Mechanical Contractors, Inc.

M. Brent Hicks
Juston M. O'Brien
Katherine G. Eckert
Baton Rouge, LA

Counsel for Defendant/Appellant
Joseph Thomas Spinosa

* * * * * * * * *

BEFORE: PARRO, GUIDRY, AND HUGHES JJ.

HUGHES, J.

This is an appeal from a trial court judgment denying a defendant's "Motion for Preliminary and Permanent Injunction Enjoining Execution of Judgment and for Mandamus," seeking to enjoin enforcement of an out-of-parish consent judgment, which the plaintiff had sought to make executory for purposes of enforcement. For the following reasons, we reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

The underlying consent judgment sought to be made executory in this litigation was rendered as a result of disputes that arose out of the construction of the Perkins Rowe development in Baton Rouge. The defendant herein, Joseph Thomas Spinosa ("Spinosa"), was the developer of Perkins Rowe, and the plaintiff, Bernhard Mechanical Contractors, Inc. ("Bernhard"), was a subcontractor on the project. In February of 2008, Bernhard and Spinosa, individually and on behalf of Perkins Rowe Associates, LLC ("Perkins"), Perkins Rowe Associates II, LLC ("Perkins II"), and Echelon Construction Services, LLC ("Echelon"), signed a settlement agreement. In the agreement, Bernhard agreed to complete specified work (per the contract plans, specifications, documents, and project observation reports) and to refrain from placing a lien, encumbrance, or "other burden" on immovable property comprising all or any portion of the project. In exchange, Spinosa, individually, and on behalf of Perkins, Perkins II, and Echelon, agreed "to be obligated in solido" for the amounts in dispute and to make the following six installment payments to Bernhard: $100,000.00 on February 22, 2008, $200,000.00 on March 22, 2008, $225,640.45 on April 22, 2008, $416,713.86 on May 22, 2008, $314,753.96 on June 22, 2008, and $257,986.36 on July 22, 2008. Bernhard reserved the

right to pursue the unbilled portion of the subcontract and certain unpaid invoices. Spinosa, Perkins, Perkins II, and Echelon reserved claims arising out of breach of warranties, as well as other claims, offset, and/or defenses under the contracts. Bernhard also agreed to remove any liens at its expense if the payments were made. Should there be a default of the agreement, Spinosa, Perkins, Perkins II, and Echelon agreed to pay 1.5% interest per month (18% per annum) on past due amounts, as well as attorney fees, and costs. It was agreed that the venue for further litigation would be in the 20th Judicial District Court, East Feliciana Parish.

On June 26, 2008 Bernhard filed suit in the 20th Judicial District Court, East Feliciana Parish, against Spinosa, Perkins, Perkins II, and Echelon, alleging the defendants owed $1,827,993.65, along with 18% interest, attorney fees, and costs, as a result of the defendants' default under the February 2008 settlement agreement, as well as for additional work performed by Bernhard.[1] The parties subsequently reached a settlement of the issues raised in the 20th Judicial District Court, and a consent judgment was signed by the parties and the district court judge on September 9, 2009, stating:

> NOW APPEARS Bernhard Mechanical Contractors, Inc., through its attorney, Craig L. Kaster, and the defendants, Echelon Construction Services, LLC; Joseph Thomas Spinosa; Perkins Rowe Associates, LLC; and Perkins Rowe Associates II, LLC, through their attorney, Christopher D. Martin, who consent to judgment herein in favor of plaintiff, Bernhard Mechanical Contractors, Inc., and against the defendants, Perkins Rowe Associates, LLC; Perkins Rowe Associates II, LLC; and Echelon Construction Services, LLC in solido in the full sum of $1,375,904.16 together with 18% interest from date of judicial demand until paid, attorney's fees of 10% and for all

[1] Bernhard alleged that the amount owed by the defendants under the settlement agreement, after amounts subsequently paid were deducted, was $1,389,933.10. Bernhard further alleged that it had done additional work on the project, which had not been included in the settlement agreement, in the amount of $438,060.53, for a total amount alleged to be due, at that time, of $1,827,993.65.

> costs of these proceedings. Bernhard Mechanical Contractors, Inc. will not take any action against the above referenced defendants to enforce this judgment prior to December 31, 2009.
>
> Furthermore, by consent of the parties, Joseph Thomas Spinosa is personally and individually obligated for $678,000.00 of which $528,000.00 is to be paid on or before March 3, 2010 and the remaining $150,000.00 with 5% interest to be paid on or before March 3, 2011. To the extent Joseph Thomas Spinosa makes payment to Bernhard Mechanical Contractors, Inc., the other defendants will receive a credit for such payment by Joseph Thomas Spinosa.
>
> It is further ordered, adjudged, and decreed that the reconventional demand of the plaintiffs in reconvention be dismissed without prejudice at the cost of plaintiffs in reconvention. However, plaintiffs in reconvention retain the right to bring any claim against Bernhard Mechanical Contractors, Inc. that was or could have been brought in this proceeding. If such action is brought prior to March 3, 2010 or prior to Joseph Thomas Spinosa making payment of $528,000.00 then Bernhard Mechanical Contractors, Inc. will be granted an extension of time to file responsive pleadings until March 4, 2010 or 10 days after Joseph Thomas Spinosa makes payment of the $528,000.00 whichever occurs first.

On March 11, 2010 Bernhard filed the instant suit in the 19th Judicial District Court, naming only Spinosa as a defendant, and requesting that: the 20th Judicial District Court consent judgment be made executory; Central Facilities Operating Company, L.L.C. ("CFOC") be cited as a garnishee; and an order be issued to CFOC directing it to answer garnishment interrogatories to disclose the extent to which it was indebted to or had property of Spinosa in its possession. The 19th Judicial District Court signed an ex parte order on March 16, 2010, making the 20th Judicial District Court consent judgment executory and citing CFOC as requested.

In response to the suit, Spinosa filed a "Motion for Preliminary and Permanent Injunction Enjoining Execution of Judgment and for Mandamus," contending, in essence, that the September 9, 2009 20th Judicial District Court consent judgment named as judgment debtors only Perkins, Perkins II, and Echelon; and while Spinosa agreed to be "personally and individually

obligated," he was not "cast in judgment." Thus, Spinosa asserted that the consent judgment could not be executed against him. Further, Spinosa contended that the obligation arising from the consent judgment had not accrued as to him, as only $528,000.00 was to be paid on March 3, 2010, while the remaining $150,000.00 would not be due for payment until March 3, 2011. Additionally, Spinosa cited the reservation of rights, contained in the consent judgment, to bring an action for any claim "that was or could have been brought in [the] proceeding," and pointing out that such a suit was subsequently filed in the 19th Judicial District Court, entitled "*Echelon Construction Services, L.L.C., Perkins Rowe Associates, L.L.C., Perkins Rowe Associates, II, L.L.C., and Joseph T. Spinosa v. Bernhard Mechanical Contractors, Inc.*," as Suit Number 583,469. Spinosa further asserted that Suit Number 583,469 involved the same parties and issues that gave rise to the consent judgment at issue, and that he and his co-plaintiffs alleged therein that Bernhard had breached the contracts and settlement agreements upon which the consent judgment was based. Thus, Spinosa asserted that the controversies giving rise to the consent judgment have not yet been resolved; therefore, he argues that the judgment sought to be made executory was not a final judgment. Spinosa also sought to have a mandamus issued to the East Baton Rouge Clerk of Court to cancel the inscription of the judgment from the official records.

Following a June 3, 2010 hearing on Spinosa's motion for injunctive relief and mandamus, the trial court denied the relief requested. Spinosa has appealed this judgment, asserting that the trial court committed error in: (1) interpreting the foreign judgment and holding it legally enforceable (asserting the foreign judgment did not cast him in judgment and that it was not final and enforceable); (2) failing to enjoin the execution of the foreign

judgment; and (3) failing to order the clerk of court to erase the judgment from the public records.

DISCUSSION

A judgment rendered in a Louisiana court may be made executory in any other Louisiana court of competent jurisdiction, if its execution has not been and may not be suspended by appeal. LSA-C.C.P. art. 2781. A creditor wishing to have a judgment of a Louisiana court made executory, as provided in Article 2781, may file an ex parte petition complying with Article 891, with a certified copy of the judgment annexed, praying that the judgment be made executory. The court shall immediately render and sign a judgment making the judgment of the other Louisiana court executory. The judgment thus made executory may be executed or enforced immediately as if it had been a judgment of the court, rendered in an ordinary proceeding. LSA-C.C.P. art. 2782. However, only a judgment of another Louisiana court having the force of res judicata can be made executory. See LSA-C.C.P. art. 2781, Official Revision Comment (c).

In this appeal, Spinosa contends the consent judgment does not contain proper decretal language as to him to constitute a valid final judgment. Spinosa further asserts that the consent judgment created only a conventional obligation or contract between the parties, the construction of which is subject to the rules for interpretation of contracts provided in the Civil Code.

Initially, we note that 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. LSA-C.C.P. art. 1841. A final judgment shall be identified as such by appropriate language. LSA-C.C.P. art. 1918. In Louisiana, the form and wording of judgments is not sacramental. Nonetheless, Louisiana courts

require that a judgment be precise, definite, and certain. LSA-C.C.P. art. 1918, Official Revision Comment (a).

A judgment does not contain proper decretal language and is fatally defective, if it does not specifically identify: (1) the party in whose favor the ruling was ordered; (2) the party against whom the ruling was ordered; and (3) the relief that was granted or denied. See **Carter v. Williamson Eye Center**, 2001-2016, p. 2 (La. App. 1 Cir. 11/27/02), 837 So.2d 43, 44. A judgment must fulfill these requirements as to each party intended to be cast in judgment. See, e.g., LSA-C.C.P. Form 1271. In the absence of proper decretal language, a ruling is not a valid final judgment. **Laird v. St. Tammany Parish Safe Harbor**, 2002-0045, p. 3 (La. App. 1 Cir. 12/20/02), 836 So.2d 364, 366. See also **Jenkins v. Recovery Technology Investors**, 2002-1788, p. 3 (La. App. 1 Cir. 6/27/03), 858 So.2d 598, 600. Litigants are entitled to decrees couched in language that is clear, concise, and not subject to misconstruction. **New York Life Ins. Co. v. Dorsett**, 152 La. 67, 72, 92 So. 737, 738-39 (1922).

Our review of the 20th Judicial District Court consent judgment at issue in this case leads us to conclude that, with respect to Spinosa, it is not a final judgment, as it lacks proper decretal language. In contrast, the portion of the judgment applicable to the other defendants (Perkins, Perkins II, and Echelon) specifically states that these defendants "consent to judgment herein in favor of plaintiff, Bernhard," whereas the portion of the consent judgment applicable to Spinosa states only that "by consent of the parties," Spinosa "is personally and individually obligated." There is no statement in the consent judgment that judgment was "rendered" against Spinosa "in favor of Bernhard." Rather, the consent judgment states only that "[t]o the extent Joseph Thomas Spinosa makes payment to Bernhard Mechanical

Contractors, Inc., the other defendants will receive a credit for such payment by Joseph Thomas Spinosa."[2] Based on the absence of decretal language, we conclude that the terms of the consent judgment, applicable to Spinosa, constituted only a contractual settlement agreement, which did not constitute a final executable judgment as to Spinosa.[3] Therefore, the 19th Judicial District Court erred in making the judgment executory in East Baton Rouge Parish for purposes of enforcement.[4]

In opposition to Spinosa's appeal, Bernhard contends that injunctive relief was only available, under LSA-C.C.P. art. 3601 et seq., where irreparable injury might otherwise result, and that the judgment of the trial court denying injunctive and mandamus relief to Spinosa should not be overturned except upon a finding of abuse of discretion by the trial court. We find these arguments misplaced under the circumstances presented in this case.

Louisiana Code of Civil Procedure Article 3601(A) provides that "[a]n injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in *other cases specifically provided by law.*" (Italics added.) Louisiana Code of Civil Procedure Article 2783 provides that the execution of a judgment made executory under the provisions of Article 2782 may be arrested by injunction if the judgment is extinguished, prescribed, *or is otherwise legally unenforceable.*

---

[2] We note the judgment does not specifically state that the obligation of Spinosa in the amount of $678,000.00 is included in the consent judgment amount of $1,375,904.16 rendered against the other named defendants, although the "credit for such payment" language so implies.

[3] No evidence appears in the record on appeal to show otherwise. A judgment that is rendered upon consent and admissions of the parties must conform to the agreement and admissions. See **Sprowl v. Stewart**, 19 La.Ann. 433, 1867 WL 4341 (1867). See also **Preston Oil Company v. Transcontinental Gas Pipe Line Corporation**, 594 So.2d 908, 913 (La. App. 1 Cir. 1991); **Winborn v. Howland**, 560 So.2d 896, 898-99 (La. App. 1 Cir. 1990).

[4] Having decided the appeal on the basis stated herein, we find it unnecessary to address the appellant's remaining arguments.

Therefore, we conclude that the bases for injunctive relief stated in LSA-C.C.P. art. 2783 constitute "other cases specifically provided by law," which are authorized as eligible for injunctive relief under a plain reading of LSA-C.C.P. art. 3601, without a showing of irreparable injury.

Typically, a trial court enjoys considerable discretion in determining whether injunctive relief is warranted, and the court's ruling will not be disturbed on appeal absent a clear abuse of discretion. See **Vartech Systems, Inc. v. Hayden**, 2005-2499, p. 8 (La. App. 1 Cir. 12/20/06), 951 So.2d 247, 256. However, if a trial court's decision was based on an erroneous interpretation or application of law, rather than a valid exercise of discretion, such an incorrect decision is not entitled to deference. **Kem Search, Inc. v. Sheffield**, 434 So.2d 1067, 1071-72 (La. 1983). See also **Pruitt v. Brinker, Inc.**, 2004-0152, pp. 3-4 (La. App. 1 Cir. 2/11/05), 899 So.2d 46, 49, writ denied, 2005-1261 (La. 12/12/05), 917 So.2d 1084.

After a thorough review of the issues presented in this case, we conclude that the 20th Judicial District Court consent judgment was not a valid final judgment as to Spinosa and was not executable or subject to being made executory in the 19th Judicial District Court; therefore, Spinosa's motion for injunctive relief and mandamus had merit. We further conclude that the trial court erred, as a matter of law, in making the 20th Judicial District Court consent judgment executory and in denying Spinosa's "Motion for Preliminary and Permanent Injunction Enjoining Execution of Judgment and for Mandamus."

CONCLUSION

For the reasons stated herein, the judgment of the trial court, denying Joseph Thomas Spinosa's "Motion for Preliminary and Permanent Injunction Enjoining Execution of Judgment and for Mandamus," is

reversed and the matter is remanded to the trial court with directions to enter judgment granting the relief requested. All costs of this appeal are assessed to Bernhard Mechanical Contractors, Inc.

REVERSED; REMANDED WITH INSTRUCTIONS.